

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2334 of 2011
M.P.No.1 of 2011

N.Devaraj

.. Petitioner

Vs.

1.N.Balasubramani
2.Banumathi
3.Jayanthi

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the fair and decretal order dated 09.08.2010 made in I.A.No.103 of 2006 in A.S.No.NIL of 2006 on the file of the Sub-Court at Ranipet, Vellore District.

For Petitioner : Mr.V.Rajendran

For R1 : Mr.K.Mohanamurali

For R2 & R3 : No appearance

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ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 09.08.2010 made in I.A.No.103 of 2006 in A.S.No.NIL of 2006 on the file of the Sub-Court at Ranipet, Vellore

2.The petitioner is plaintiff and respondents are defendants in O.S.No.744 of 2005. The petitioner filed the said suit for partition and permanent injunction. By the judgment and decree dated 30.06.2005, the said suit was dismissed. The petitioner filed appeal along with I.A.No.103 of 2006 to condone the delay of 434 days in filing the appeal. According to the petitioner, after dismissal of the suit, the first respondent, who is the brother of the petitioner approached the petitioner for settlement. The petitioner accepted the same. The respondents 2 and 3 are the sisters. Subsequently, the first respondent entered into the suit property with rowdy elements. Therefore, the petitioner filed appeal along with the petition to condone the delay in filing the appeal.

3.The first respondent filed counter affidavit and denied all the averments that the first respondent approached the petitioner for settlement. On the other hand, the first respondent has sold the property to one Bannalal, after dismissal of the suit and expiry of the appeal time. The petitioner has not given any particulars with regard to the settlement and the reason given by the petitioner for delay is not a valid reason and prayed for dismissal of the application.

4.The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the application.

5.Against the said order dated 09.08.2010 made in I.A.No.103 of 2006 in A.S.No.NIL of 2006, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner reiterated the averments made in the affidavit, contentions raised in the grounds and further submitted that the learned Judge refused to allow the petitioner to let in evidence to substantiate his case with regard to negotiations and settlement. The learned Judge failed to take note of the fact that petitioner filed appeal with present I.A, one day prior to the second respondent executing the sale deed in favour of the Bannalal. The said purchaser is not bonafide purchaser, as he is residing in the same street and he is aware of the partition suit filed by the petitioner. The learned counsel for the petitioner also submitted that respondents 2 and 3 are sisters and they are also claiming partition and they are sailing with the petitioner.

7. Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record. Though notice is served on the respondents 2 and 3 and their names are printed in the cause list, there is no representation either in person or through counsel.

8. The contention of the learned counsel for the petitioner is that, after dismissal of the suit filed by the petitioner, there was a settlement talk between the petitioner and first respondent. The first respondent, in order to prevent the petitioner from filing the appeal, dragged on the matter and without his knowledge, one day after filing of the appeal, he executed the sale deed in favour of Bannalal. The petitioner filed appeal along with the present I.A.

9. It is well settled law that application for condoning the delay must be considered liberally and length of delay is not a criteria. The Courts must see whether the party has given acceptable and valid reason and the intention of the parties must be bonafide and should not be malafide. In the present case, the petitioner has stated that the first respondent, who is the brother, in

order to prevent the petitioner from filing appeal, dragged on the proceeding by way of settlement talk and sold the property to third party, on the next day, the petitioner filed the appeal along with the present application.

10. Considering the reasons stated by the petitioner, this Civil Revision Petition is allowed and the order of the learned Subordinate Judge is set aside. No costs. Consequently, connected miscellaneous petition is closed. The learned Subordinate Judge, Ranipet is directed to number the Appeal within a period of 2 weeks from the date of receipt of a copy of this order, if otherwise in order and dispose the same within a period of 3 months thereafter.

Index: Yes/No
gsa

21.11.2017

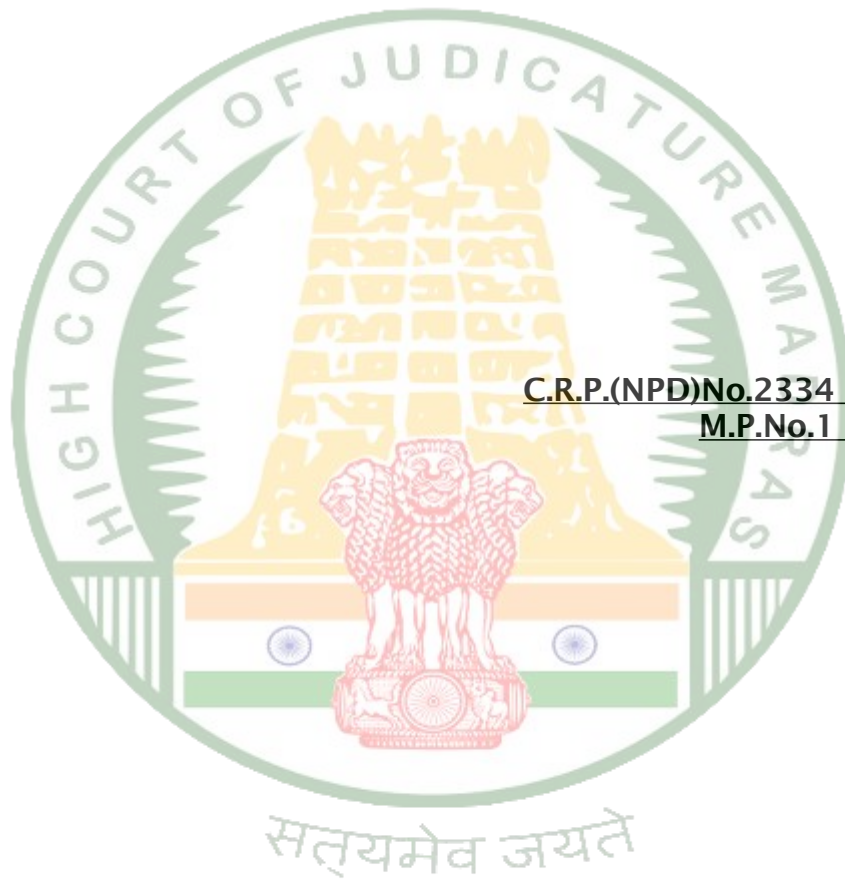
To

The Subordinate Judge,
Ranipet,
Vellore District.

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V.M.VELUMANI,J.

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