

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.197 of 2015
& M.P.No.1 of 2015

1.Senthil Kumar
2.Malathi
3.Jayanthi
4.Anitha
5.Swarna Preethi

.. Petitioners

Vs.

A.Samundeeswari

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the order and decretal order of the learned Principal District Judge, Tiruvallur dated 07.11.2014 in I.A.No.48 of 2014 in unnumbered AS SR No.1380 of 2014.

For Petitioners : Mr.K.V.Ananthakrushnan

For Respondent : M/s.M.Udayabhanu

ORDER

This Civil Revision Petition is filed to set aside the order and decretal order of the learned Principal District Judge, Tiruvallur dated 07.11.2014, made in I.A.No.48 of 2014 in unnumbered AS SR No.1380 of 2014.

2.The first petitioner is second defendant, petitioners 2 to 5 /defendants 3 to 6 are the legal heirs of the deceased first defendant and respondent is the plaintiff in O.S.No.10 of 2010 on the file of Subordinate Court, Tiruttani (formerly O.S.No.53 of 2007 on the file of the Sub Court, Tiruvallur). The respondent filed the said suit for partition, passing preliminary decree directing the first defendant and petitioners to divide the suit properties into two equal shares and allot one share to the respondent. After contest, a preliminary decree was passed on 30.07.2011. The respondent filed I.A.No.156 of 2013 for passing final decree by appointing Advocate Commissioner to divide the suit and schedule mentioned properties into two equal shares by metes and bounds and to allot one share to the respondent.

3.The petitioners filed Appeal along with I.A.No.48 of 2014 to condone the delay of 886 days in filing the Appeal. The second petitioner filed affidavit in support of the above application. According to the second petitioner, she was suffering from various diseases for past few months and she only know the details of the complete case. She did not inform other petitioners about the suit.

The judgment and decree of the Trial Court obtained earlier was missing. She engaged a new Advocate and obtained a judgment and decree and filed the Appeal along with the present application to condone the delay in filing the Appeal.

4.The respondent filed counter affidavit and denied all the averments made by the petitioners. According to the respondent, the second petitioner has not stated the nature of illness and from when she was suffering from illness and first petitioner herein was examined as DW1 in the suit. No reason was given as to why other petitioners have not taken steps to file Appeal. Only after two years of filing the application for final decree, the petitioners have come out with the Appeal and the present petition to drag on the proceedings.

5.The learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application.

6.Against the said order dated 07.11.2014 made in I.A.No.48 of 2014 in unnumbered AS SR No.1380 of 2014, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

8. From the materials available on record, it is seen that there are 5 defendants in the suit who are the petitioners before this Court. The second petitioner filed an affidavit stating that she suffered from illness for few months and could not file affidavit in time. The second petitioner did not furnish the details as to the nature of the illness and from when she was suffering from the same. No document was produced to substantiate her contention that she was suffering from illness. No explanation was either given as to why other petitioners/defendants failed to take steps to file an Appeal. The contention of the second petitioner that she only know the complete case is contrary to the fact since the first petitioner was examined as DW1 on behalf of the petitioners. From the impugned order, it is seen that petitioners have applied for copies of the judgment only on 24.01.2013, after a lapse of 2½ years. The petitioners have stated that copies of judgments and decrees obtained earlier by them were missing. The learned Judge has rejected the said contention on the ground that petitioners have not furnished G.No. under which they have obtained certified copy of

the earlier judgment and decree. From the above materials, it is clear that only with an intention to drag on the proceedings, the present application has been filed. In the circumstances, I hold that the learned Judge has rightly dismissed the application and there is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 07.11.2014 made in I.A.No.48 of 2014.

9.In the result, this Civil Revision petition is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

13.12.2017

Index: Yes/No

gsa

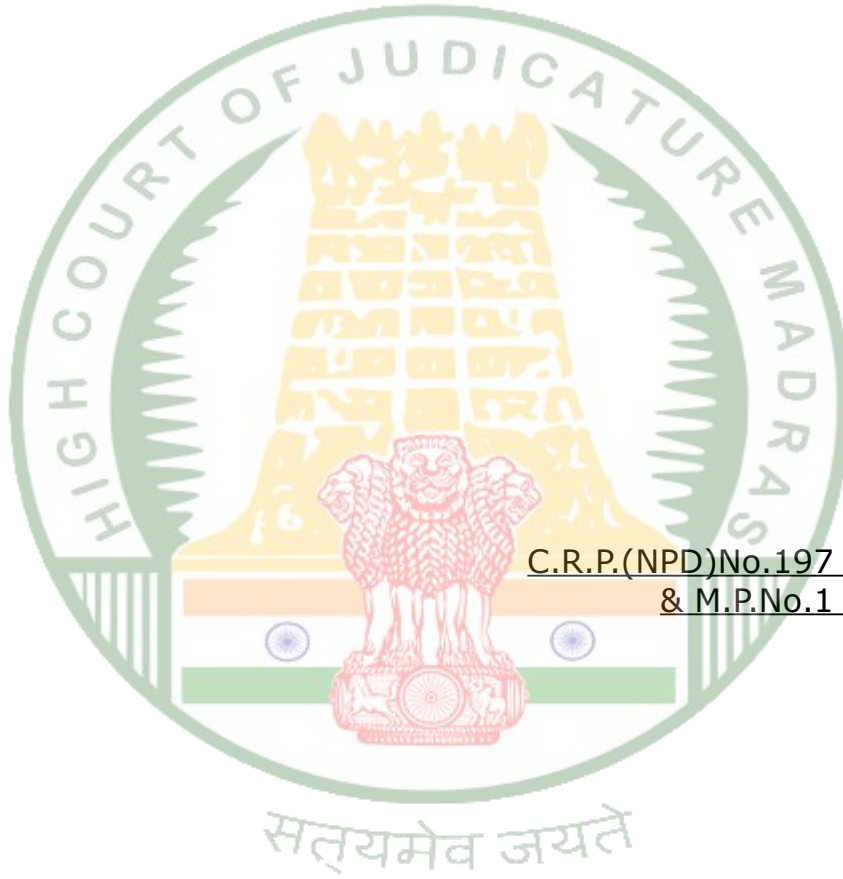
To

The Principal District Judge,
Tiruvallur

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V.M.VELUMANI,J.

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