

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.3869 & 3870 of 2011
and

CMP.Nos.3730 to 3732/2017, 3733 to 3735/2017

1. K.Nanjundan (Deceased)
2. Suguna
3. Mala
4. Saravana
5. Manjula
6. Arun

.. Petitioners in
both the C.R.Ps

[Petitioners 2 to 6 brought on records
as LR of deceased 1st petitioner vide
order of Court dated 09.03.2017
passed in C.M.P.Nos.3730 to 3732/2017
and C.M.P.Nos.3733 to 3735/2017
in respectively C.R.P.Nos.3869 & 3870/2011.]

Vs.

Malavizhi

.. Respondent
in both C.R.Ps

PRAYER in both the C.R.Ps: Civil Revision Petitions filed under
Section 115 of C.P.C., to set aside the fair and decretal orders of
the District Munsif at Coimbatore, dated 03.06.2011 in I.A.Nos.23 &
24 of 2011 in O.S.No.3484 of 2004 respectively.

For Petitioners : Mr.P.Valliappan
(both C.R.P.s)
For Respondent : Mr.M.Parthasarathy
(both C.R.P.s)

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decreetal orders dated 03.06.2011 made in I.A.Nos.23 & 24 of 2011 in O.S.No.3484 of 2004 respectively, on the file of the District Munsif at Coimbatore.

2. The issues involved in both the Civil Revision Petitions are one and the same and therefore, disposed of by this common order.

3. The first petitioner is the plaintiff, respondent is the third defendant in O.S.No.3484 of 2004 on the file of the III Additional District Munsif Court, Coimbatore (Previously O.S.No.426 of 1998 on the file of the Subordinate Judge, Coimbatore). The first petitioner filed suit for partition against the respondent and others. The respondent and others filed written statement. The exparte preliminary decree was passed on 14.09.2000. The respondent and others filed an application to set aside the exparte preliminary

decree and the same was allowed on 30.12.2002. Subsequently, when the suit was posted for cross-examination, the respondent did not appear. Therefore, she was set exparte and exparte preliminary decree was passed on 24.02.2006. The petitioners filed an application in I.A.No.602 of 2006 for passing final decree. The said application was allowed on 06.02.2006, for passing final decree. The said application was allowed on 21.03.2007. In this stage, the respondent filed two applications in I.A.Nos.23 and 24 of 2011, to condone the delay in filing the application to set aside the exparte preliminary decree and exparte final decree.

4. According to the respondent, her husband was employed in a Railway Department and she was residing in various places in Goa, along with her husband. She was not aware of the suit proceedings and she was not talking to her brother and the advocate engaged by him also did not inform the stage of the suit. In the earlier suit, the suit property was declared as a common pathway. The respondent came to know about the exparte decree, only when the Advocate Commissioner came to inspect the suit property. Immediately the respondent filed two applications for condoning the delay in the filing the application to set aside the exparte preliminary decree and exparte final decree.

5. The petitioners filed counter affidavit and opposed the said application and submitted that the respondent has not given any valid reason for condoning the delay.

6. The learned Judge, considering the averments in the affidavit and counter affidavit, held that the respondent has not given any valid reason to condone the delay but allowed the application in order to give an opportunity to the respondent to put forth her case on merits.

7. Against that order dated 03.06.2011, made in I.A.Nos.23 & 24 of 2011 in O.S.No.3484 of 2004, the present civil revision petitions are filed by the petitioners.

8. Heard the learned counsel appearing for both parties and perused the materials on record.

9. The respondent has not given sufficient and valid reason for condone the delay. 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 parties were

given acceptable and valid reasons and the intention of the parties is bonafide and not malafide. In the present case, from the averments made in the affidavit, it is clear that the intention of the respondent is not bonafide.

10. The learned Judge, failed to consider the intention of the counsel for the petitioner, that he is the senior citizen and respondent refused to receive the notice sent to her in the E.P. Proceedings. The learned Judge has failed to consider this fact in proper perspective and committed on irregularity in allowing the application after holding that respondent has not given any valid reason for condoning the delay. In view of the above facts the impugned orders of the learned Judge are liable to be set aside and the Civil Revision Petitions are allowed.

11. In the result, the civil revision petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

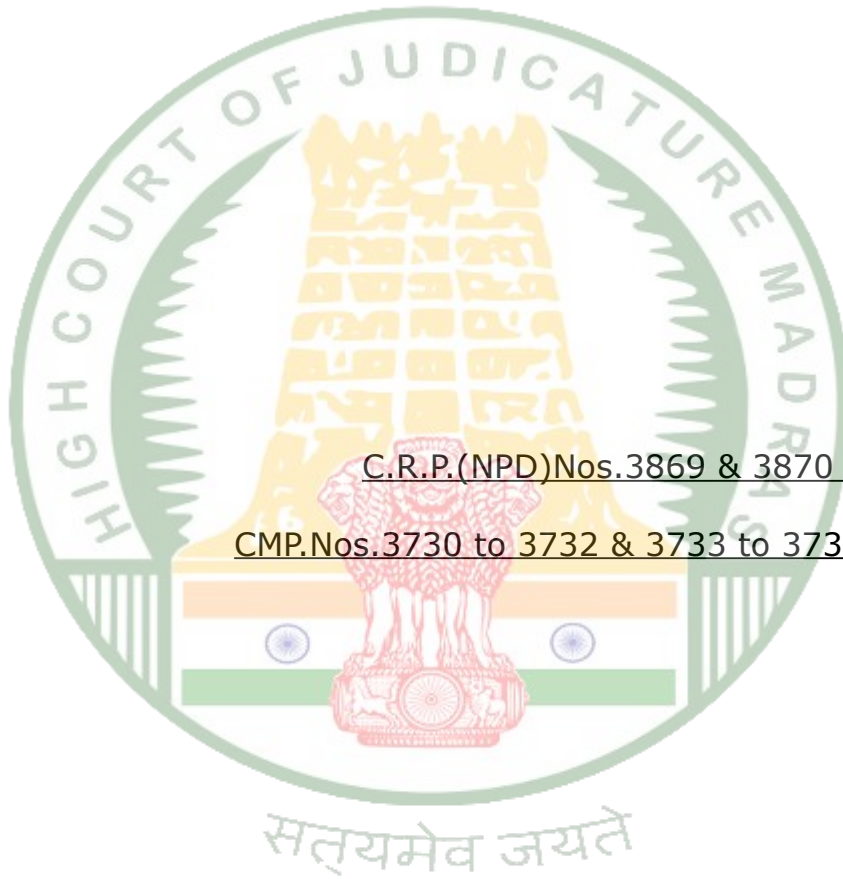
19.07.2017

Index : Yes/No
sji/gsa

V.M.VELUMANI, J.

sjl

To
The District Munsif,
Coimbatore.



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and
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