

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

CRP (NPD)No.4723 of 2011
and MP.No.1 of 2011

1.A.Krishnasamy
2.A.Rajammal
3.K.Pappathy

.. Petitioners

Vs.

1.P.Palanisamy
2.P.Akkammal
3.R.Leelavathy

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and final order dated 22.12.2010 passed in I.A.No.476 of 2010 in O.S.No.1443 of 2006 on the file of II Additional District Munsif Court, Coimbatore.

For Petitioners : Mr.S.Arjun
for Mr.M.Parthasarathy

For Respondents : Mr.K.Selvaraj

ORDER

This Civil Revision Petition has been filed praying to set aside the fair and final order dated 22.12.2010 passed in I.A.No.476 of 2010 in O.S.No.1443 of 2006 on the file of II Additional District Munsif Court, Coimbatore.

2. The petitioners are the defendants and respondents are the plaintiffs in the suit in O.S.No.1443 of 2006 on the file of the District Munsif Court, Coimbatore. The respondents filed the suit for partition. The petitioners filed written statement, but subsequently did not contest the suit. When the suit was posted for cross-examination of P.W.1, all the three petitioners did not appear and therefore, they were set ex-parte by an order dated 16.07.2010.

3. The petitioners filed an application in I.A.No.295 of 2010 to set aside the ex parte order dated 16.07.2010. The learned trial Judge allowed the application vide order dated 02.09.2010, on condition that the petitioners shall pay a sum of Rs.400/- to the respondents on or before 14.09.2010, and also directed them to appear before the trial Court on the said date. The petitioners did not pay the costs within the time granted by the trial Court. The learned Judge dismissed the application in I.A.No.295 of 2010. Thereafter, the petitioners filed an application in I.A.No.476 of 2010, for extension of time for payment of costs. It is contended by the petitioners that by oversight they failed to comply with the order of the trial Court and hence prayed for extension of time.

4.The respondents filed counter and denied the averments stated by the petitioners and submitted that only with a view to drag on the proceedings the petitioners have filed the application in I.A.No.476 of 2010 and prayed for dismissal.

5. The learned Judge considering the facts of the case, dismissed the application vide order dated 22.12.2010, holding that earlier in an application in I.A.No.178 of 2008 dated 09.6.2008, an ex parte order was passed against the petitioners, but the same was set aside, and an opportunity was given to the petitioners to contest the case. Again an exparte order was passed against the petitioners. The petitioners filed an application in I.A.No.295 of 2010, to set aside the exparte order dated 16.07.2010, where a conditional order was passed by the trial Court, and on failure on the part of the petitioners to comply with the condition, the said application was dismissed. Thereafter, the petitioners filed an application in I.A.No.476 of 2010 seeking extension of time to comply with the conditional order passed in I.A.No.295 of 2010, that too after after a lapse of fifteen days of the order of dismissal passed in I.A.No.295 of 2010, which is after the expiry of time granted by the Court. The trial Court has held that in the said circumstances the application seeking extension of time cannot be

allowed, at a stage, where a final order has been passed. Further, the trial Judge had held in his order that the judgment relied on by the petitioner reported in **[2003 (3) CTC 461]** to defend the case is not applicable to the present case.

6. Against the said order of dismissal passed by the learned II Additional District Munsif, Coimbatore, the petitioner has filed the present civil revision petition.

7. Heard the learned counsel appearing for the petitioners and perused the materials available on records.

8. From the materials available on record, it is seen that the respondents have filed the suit for partition, and the petitioners are contesting the suit. Subsequently, the petitioners failed to cross-examine P.W.1, and an exparte order was passed in the application, and to set aside the exparte order, the petitioners filed the application in I.A.No.295 of 2010, which was allowed on 02.09.2010 on condition that the petitioners pay a sum of Rs.400/- as costs to the respondents. On the failure of the petitioners to pay the amount, the application to set aside the exparte order was dismissed. Thereafter, the petitioners filed the application in

I.A.No. 476 of 2010 seeking extension of time.

9. This Court, considering all these facts in entirety, is of the view that the suit is for partition and that the parties are relatives, and in the interest of justice, the petitioners are to be permitted to putforth their case on merits, and therefore, the order passed by the learned trial Judge in I.A.No.476 of 2010 is liable to be set aside and the application filed by the petitioners may be taken on file afresh. Accordingly, the order of the learned II Additional District Munsif, Coimbatore, is set aside on condition that the petitioners pay a sum of Rs.1,000/- as costs to the respondents within two weeks from the date of receipt of a copy of this order, and to file a compliance report before the learned trial Judge. On such compliance, the learned Judge is directed to set aside the ex parte order passed in I.A.No.295 of 2010 and the suit may be disposed of on merits and in accordance with law as expeditiously as possible within a period of four months from the date of filing the compliance report.

10. With the above direction, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2017

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Speaking order/Non-speaking order

Internet : Yes / No

Index : Yes/No

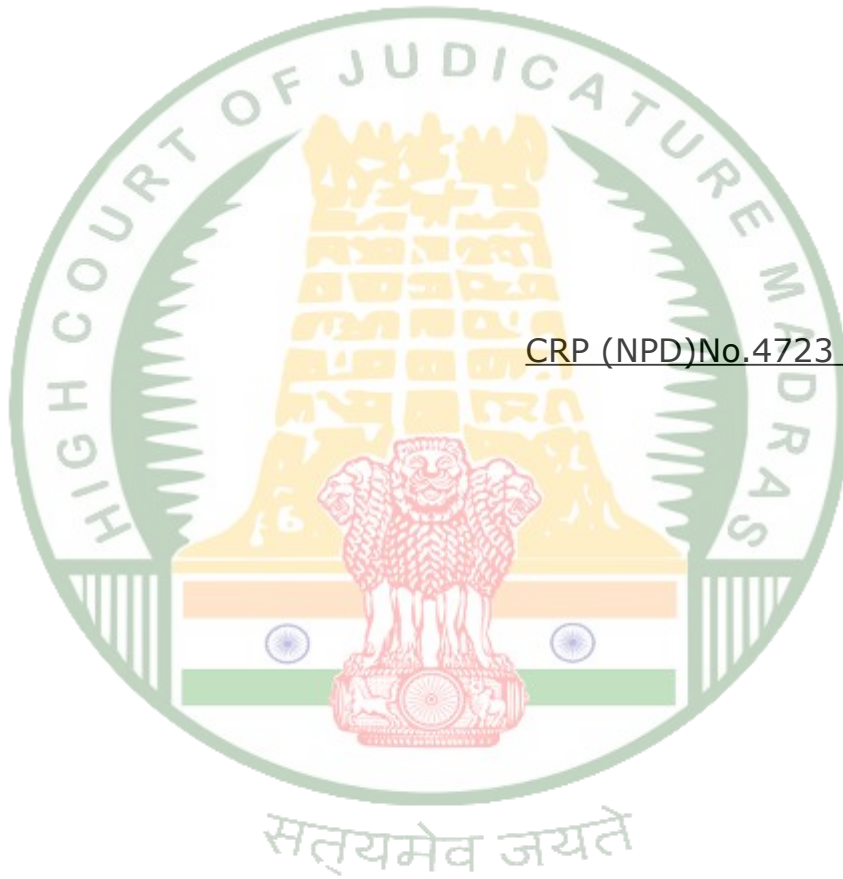
To:

The II Additional District Munsif,
Coimbatore.

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V.M.VELUMANI, J.

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