

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2400 of 2012
& M.P.No.1 of 2012

Rajasekaran

.. Petitioner

Vs.

1.Gnanasekaran
2.Jeeva
3.Umarani
4.Vanaja
5.Minor Divya
6.Minor Nithiya

.. Respondents

(Minors 5 & 6 by Guardian
mother Vanaja)

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 07.10.2011 made in I.A.No.12 of 2009 in O.S.No.7 of 2004 on the file of the Additional District & Sessions Court, Tindivanam, (Fast Track Court-II, Tindivanam).

For Petitioner : Mr.N.Suresh

For R1 & R2 : Mr.R.Agilesh
For R3 & R4 : No Appearance
For R5 & R6 : Minors represented
by R4

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 07.10.2011 made in I.A.No.12 of 2009 in O.S.No.7 of 2004 on the file of the Additional District & Sessions Court, Tindivanam, (Fast Track Court-II, Tindivanam).

2. The petitioner is the first defendant, respondents 1 to 3 are the plaintiffs and respondents 4 to 6 are the legal heirs of the second defendant in O.S.No.7 of 2004. The respondents 1 to 3 filed suit for partition. A preliminary decree was passed on 28.02.2005. The respondents 1 to 3 filed I.A.No.3 of 2007 for passing of final decree. In the said application, the Advocate Commissioner was appointed and the Advocate Commissioner inspected the suit property and filed his report. Final decree was passed on 06.12.2007. The petitioner filed the present I.A.No.12 of 2009 to condone the delay of 177 days in filing the application to set aside the final decree dated 06.12.2007.

3. According to the petitioner, notice in the final decree application was not served on him directly and he was bed ridden on

that day. He was not aware of the inspection by the Advocate Commissioner. Based on the report of the Advocate Commissioner, final decree has been passed adverse to his interest. After recovering from illness, he contacted his advocate and came to know that the final decree passed and filed the present application to condone the delay of 177 days in filing the application to set aside the final decree.

4. The respondents 1 to 3 filed counter affidavit and opposed the averments made in the affidavit filed in support of the said application.

5. Before the learned Judge, the petitioner examined himself as P.W.1 and marked Ex.C1. The respondents 1 to 3 examined R.W.1 and R.W.2 and marked two documents as Exs.C2 and C3.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and oral & documentary evidence, dismissed the application rejecting the claim of the petitioner.

7. Against the said order of dismissal dated 07.10.2011 made in I.A.No.12 of 2009, the present Civil Revision Petition is filed by

the petitioner/first defendant.

8. Heard the learned counsel for the petitioner and respondents 1 and 2 and perused the materials available on record.

9. The contention of the learned counsel appearing for the petitioner is that notice in the final decree application was not served directly on the petitioner and he was not aware of the inspection made by the Advocate Commissioner. These contentions are contrary to the facts.

10. From the materials on record, it is seen that the learned Judge considering Ex.C1/notice in I.A.No.3 of 2007 marked by the petitioner, has come to the conclusion that the petitioner has received notice in final decree application, even though he signed in the said notice as T.R.Rajasekar. It is seen from the evidence of R.W.2/Advocate Commissioner that the petitioner was present, when he inspected the suit property and prepared the sketch.

11. In view of the evidence on record, the learned Judge rightly dismissed the application holding that the reason given by the petitioner is not valid to condone the delay of 177 days in filing

the application to set aside the final decree.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

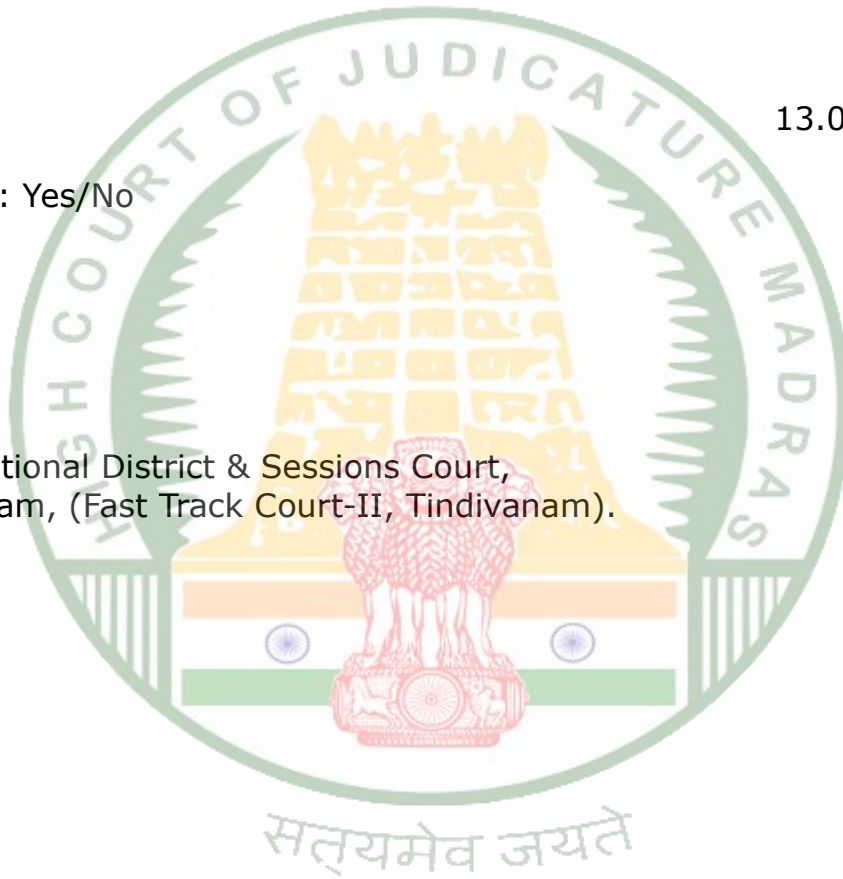
13.09.2017

Index : Yes/No

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To

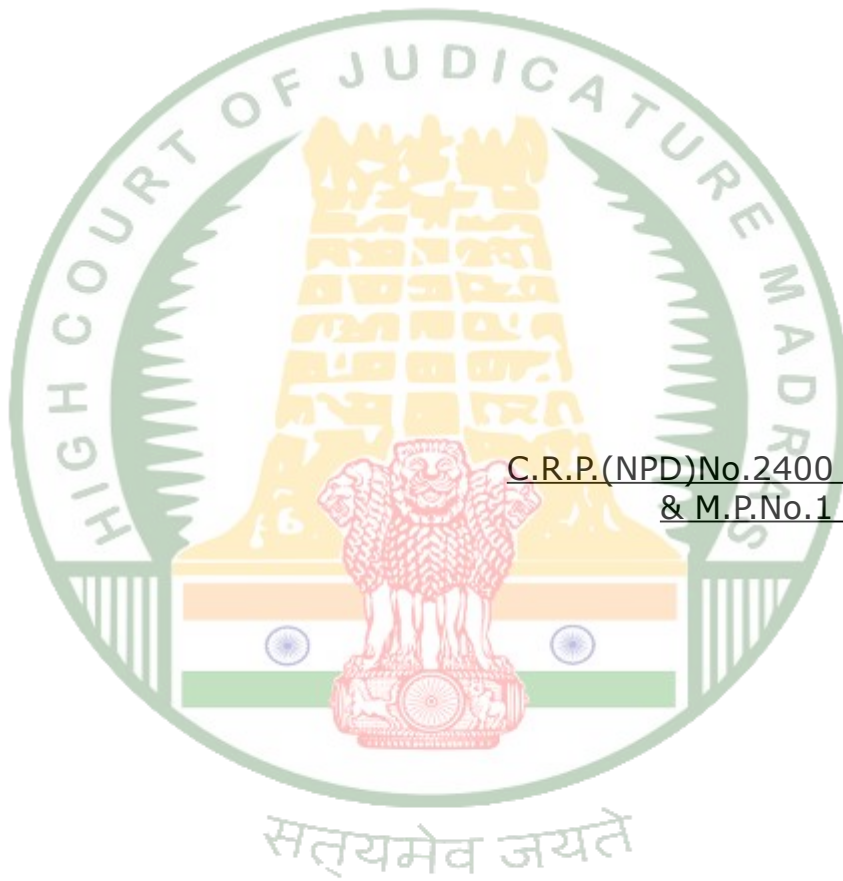
The Additional District & Sessions Court,
Tindivanam, (Fast Track Court-II, Tindivanam).



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V.M.VELUMANI, J.

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