



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) (NPD) No.2372 of 2017

Kaliyanna Gounder

... Petitioner

Vs.

N.S.Ganesan

... Respondent

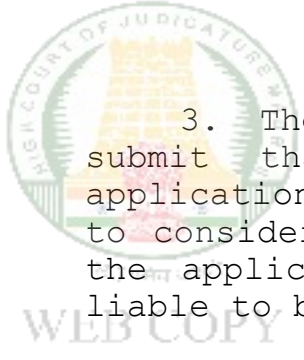
PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 26.10.2017 in I.A.No.448 of 2016 in A.S.S.R.No.6894/15.12.2016 on the file of Principal District Court, Karur.

For Petitioner : Mr.K.Govindarajan

O R D E R

The Civil Revision Petition has been filed against the fair and decreetal order dated 26.10.2017 in I.A.No.448 of 2016 in A.S.S.R.No.6894/15.12.2016 on the file of the Principal District Court, Karur.

2. The petitioner is the defendant in the suit in O.S.No.47 of 2013 and the respondent is the plaintiff and he has filed the suit for partition. The petitioner/defendant participated in the trial Court proceedings. The trial Court decreed the suit allotting half share in the suit properties to the respondent. The respondent filed I.A.No.107 of 2014 for final decree. The petitioner appeared in the final decree proceedings and took time for filing counter and since the petitioner did not file counter statement, an advocate was appointed as a Commissioner to divide the properties. The Commissioner inspected the suit properties in the presence of both the parties and filed his report in the trial Court, on 31.08.2015. Thereafter, the respondent filed his objections. The trial Court, after considering the objections and hearing the parties, passed the final decree on 05.01.2015. Thereafter, the respondent filed E.P.No.70 of 2016 for delivery of possession. After receiving notice, the petitioner did not appear and the delivery was ordered and the respondent also took delivery of possession, on 14.09.2016. Thereafter, the delivery was recorded on 26.09.2016 and the E.P. was also terminated. At this point of time, the petitioner has filed the application in I.A.No.448 of 2016 for condoning the delay of 967 days in preferring the appeal. The learned Principal District Judge, Karur has dismissed the application. Against which, the present Civil Revision Petition has been filed.



3. The learned counsel appearing for the petitioner would submit that the trial Court has erroneously dismissed the application for condoning the delay and the trial Court has failed to consider the health condition of the petitioner, while deciding the application. Hence, the order passed by the trial Court is liable to be set aside.

4. Perusal of the records shows that delivery was recorded on 26.09.2016 and the E.P. was also terminated and thereafter, the petitioner has filed the application in I.A.No.448 of 2016 for condoning the delay of 967 days in preferring the appeal. Since the delivery has been ordered and the E.P. has also been terminated, there is nothing for adjudication in the Civil Revision Petition and the trial Court has rightly dismissed the application for condoning the delay and there is no infirmity in the order passed by the trial Court. Accordingly, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Principal District Court,
Karur.

+1cc to M/S.K.Govindarajan, Advocate SR.No. 92574

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akv

JM/SV MMS/SAR 1/19.02.2018/2P/3C