

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

C.R.P.(NPD) NO.1256 OF 2018
AND CMP NO.6476 OF 2018

Chinnusamy

... Petitioner

Versus

1.Mariammal
2.Lakshmi

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the order passed in I.A.No.1631 of 2003 in O.S.No.120 of 1998 on the file of the District Munsif Court, Omalur, dated 17.01.2018.

For Petitioner : Mr.C.Kulanthaivel
For Respondents : Mr.T.Ganesan

ORDER

The second defendant is the revision petitioner. The revision Petitioner has filed an application in I.A.No.1631 of 2013 in O.S.No.120 of 1998 on the file of District Munsif Court, Omalur, to condone the delay

of 5474 days in filing the petition to set aside the *exparte* preliminary decree dated 27.10.1998. The said petition, after contest, came to be dismissed vide impugned fair and decreetal order, dated 17.01.2008. Challenging the legality of the same, the present Civil Revision Petition is filed.

2. Mr.C.Kulanthaivel, learned counsel appearing for the revision petitioner has invited attention of this Court to the typed-set of documents and would submit that the petitioner was under the *bonafide* impression that since he paid money to his two sisters, they would not pursue the matter. However, they proceeded with the suit and got the *exparte* preliminary decree behind his back. That apart, the petitioner was suffering from stomach ailments and as such, he was not able to approach the Court on time, to set aside the *exparte* preliminary decree and therefore, the delay had occurred.

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3. It is the further submission of the learned counsel appearing for the revision petitioner that the petitioner has also examined himself as P.W.1 to substantiate the averments made in the

affidavit filed in support of the petition. However, the Trial Court, without properly appreciating the relevant facts and circumstances and more particularly, the fact that the *exparte* preliminary decree for partition and other allied reliefs came to be granted, ought to have offered an opportunity to the revision petitioner / second defendant, to contest the suit on merits and prays for interference.

4. Per contra, learned counsel appearing for the respondents has invited attention of this Court to the oral evidence of the revision petitioner / P.W.1 as well as the affidavit filed in support of the petition for condonation of delay and would submit that neither in the affidavit filed in support of the petition nor in the oral evidence, the revision petitioner has assigned any reason for condonation of huge delay in filing the application to set aside the *exparte* preliminary decree and on account of the dilatory tactics adopted by him, the final decree application in I.A.No.1001 of 10 could not be proceed with. Therefore, he prays for dismissal of the revision petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. A perusal of the affidavit filed in support of the petition as well as the oral evidence of P.W.1 would disclose that he has very well aware of the proceedings and the explanation offered is that since he has settled the dispute with his two sisters, he did not contest the matter and as regards settlement, though he examined himself as P.W.1, no evidence is forthcoming.

7. The affidavit merely deals with the merits of the matter and this Court is of the considered view that at this juncture, merits of the matter cannot be gone into, as it is obligatory on the part of the revision petitioner to explain the reasons for such a huge delay in filing such application to set aside the *ex parte* preliminary decree. The revision petitioner has failed to assign any proper, tangible and acceptable reasons for condonation of such huge delay of 5474 days in filing the application to set aside the *ex parte* preliminary decree. It is also to be noted at this juncture that the *ex parte* preliminary decree

came to be passed as early as on 27.10.1998 and the final decree application in I.A.No.1001 of 2010 is kept pending right from 07.08.2012. In the considered opinion of this Court, the Trial Court has taken into consideration the factual aspects and correctly applied the legal position and dismissed the petition. Therefore, this Court is of the considered view that there is no error apparent on the reasons assigned by the Trial Court.

8. In the result, the Civil Revision Petition is dismissed, confirming the fair and decreetal order dated 17.01.2018 passed in I.A.No.1631 of 2013 in O.S.No.120 of 1998 by the District Munsif Court, Omalur. No costs. Consequently, connected civil miscellaneous petition is closed.

सत्यमेव जयते

22.06.2018

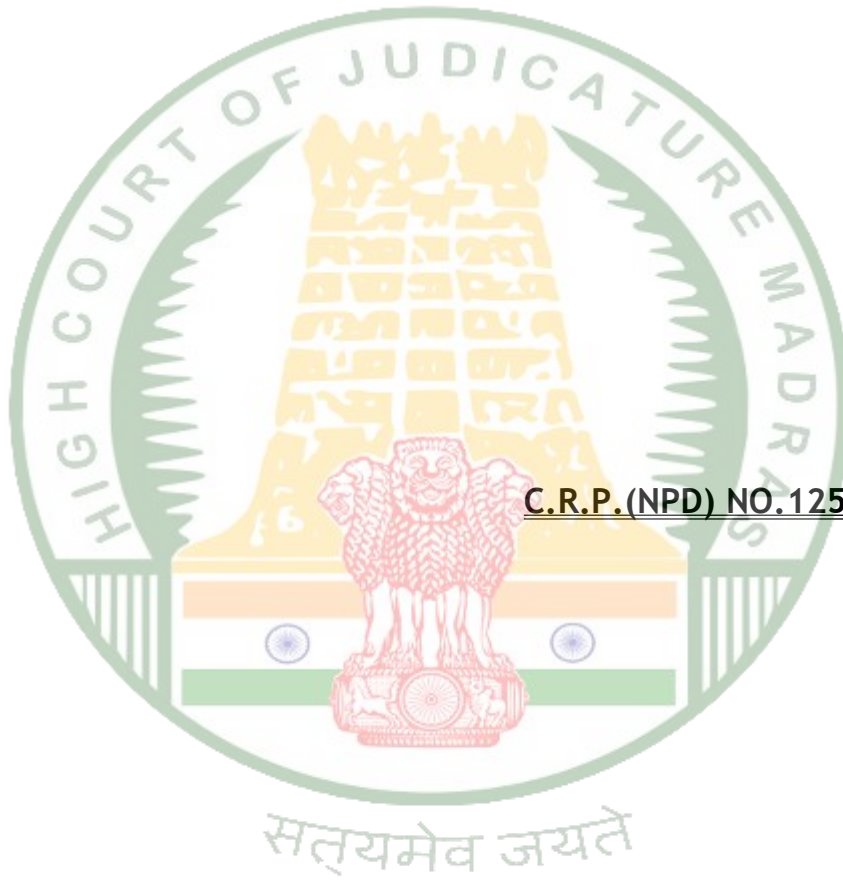
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To
The District Munsif Court
Omalur.

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M.SATHYANARAYANAN, J.

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