

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.06.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(PD)No.1479 of 2018

and

C.M.P.No.7878 of 2018

1.Kamala

2.Shanthi

.. Petitioners

vs.

Suguna

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 05.12.2017 passed in I.A.No.337 of 2013 in O.S.No.26 of 2006 by the learned Subordinate Judge, Madurantakam.

For Petitioner

... Mr.M.Gnanasekar

For Respondent

... Mr.D.Lakshmipathy

ORDER

The Civil Revision Petition has been filed by the petitioner to set aside the fair and decretal order dated 05.12.2017 passed in I.A.No.337 of 2013 in O.S.No.26 of 2006 by the learned Subordinate

Judge, Madurantakam.

2. The petitioners herein are the defendants and the respondent herein is the plaintiff in O.S.No.26 of 2006 on the file of the Sub Court, Madurantakam.

3. The brief facts of the case are as follows:

The respondent/plaintiff filed the said suit against the petitioners/defendants seeking to divide the entire family properties into three equal shares and allot one such share to the respondent. The petitioners/defendants have also filed the written statement to contest the suit. Pending suit, the petitioners/defendants filed an application in I.A.No.337 of 2013 to condone the delay of 2164 days in filing application to set aside the exparte preliminary decree dated 09.01.2007 and the same was dismissed by the trial Court on 05.12.2017. Feeling aggrieved by the said order, the present civil revision petition has been filed by the petitioners.

4.The learned counsel for the petitioners submitted that the petitioners/defendants are none other than the sisters-in-law of the respondent/plaintiff. The suit properties in S.Nos.176/3 and 176/10 have been already settled to one Jothiramalingam and Durai babu by executing a registered settlement deed dated 02.11.1962 and the

same is accepted and acted upon. The husband of the respondent/plaintiff died on 06.09.2004 and Jothiramalingam died on 26.10.2005. Hence, the respondent's husband cannot be a legal heir for the properties of Jothiramalingam, deceased. Hence, the petitioners alone are the legal heirs and the respondent has no share over the suit property. The trial Court without considering case of the petitioners, erroneously dismissed the application. Hence, the impugned order passed by the trial Court is liable to be set aside.

5. The learned counsel for the respondent submitted that the petitioner has not assigned any reason to condone the delay of 2164 days and the allegations made by the petitioners are not true and correct. Further notice has already been duly served in the preliminary decree as well as final decree and in Execution proceedings. Though the petitioners are well aware of the suit proceedings, they filed the application to condone the delay of 2164 days at the belated stage. The learned Judge, after considering the facts of the case, rightly dismissed the application filed by the petitioners.

6. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

7. On a perusal of records it is seen that the suit is filed in the year 2006. The petitioners/defendants are none other than the sisters-in-law of the respondent/plaintiff. The petitioners have filed this application to set aside the exparte preliminary decree dated 09.01.2007 after a lapse of more than 10 years. The contention made by the petitioners that they have engaged a counsel and entrusted papers and the previous counsel did not inform the stages of the suit and as a result, exparte preliminary decree and final decree were passed is not acceptable. Now, E.P. is pending against the petitioners. Though the petitioners have known the stage of entire suit proceedings namely, exparte preliminary decree and final decree, they have not come forward to file any application at the earlier stage and they have not stated any specific reason for the delay caused in filing the application. Hence, the learned trial Judge rightly dismissed the application.

8. It is further seen that the petitioners entered appearance. subsequent to that, they remained exparte and exparte preliminary decree was passed and final decree proceedings were also initiated. Thereafter, final decree was passed and till the passing of the final decree, they remained absent. The respondent has also filed Execution

Petition. At this stage, the petitioners filed an application to condone the delay of 2164 days i.e more than 6 years. The proof by sufficient cause is a condition precedent for exercise of the extraordinary restriction vested in the Court. What Counts is not the length of the delay but sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. Moreover, the petitioners have not stated any sufficient reasons to condone the delay of 2164 days in filing the application and there is no merit in the Civil Revision Petition. There is no illegality or infirmity in the order passed by the Court below warranting interference.

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

05.06.2018

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Index:Yes/No

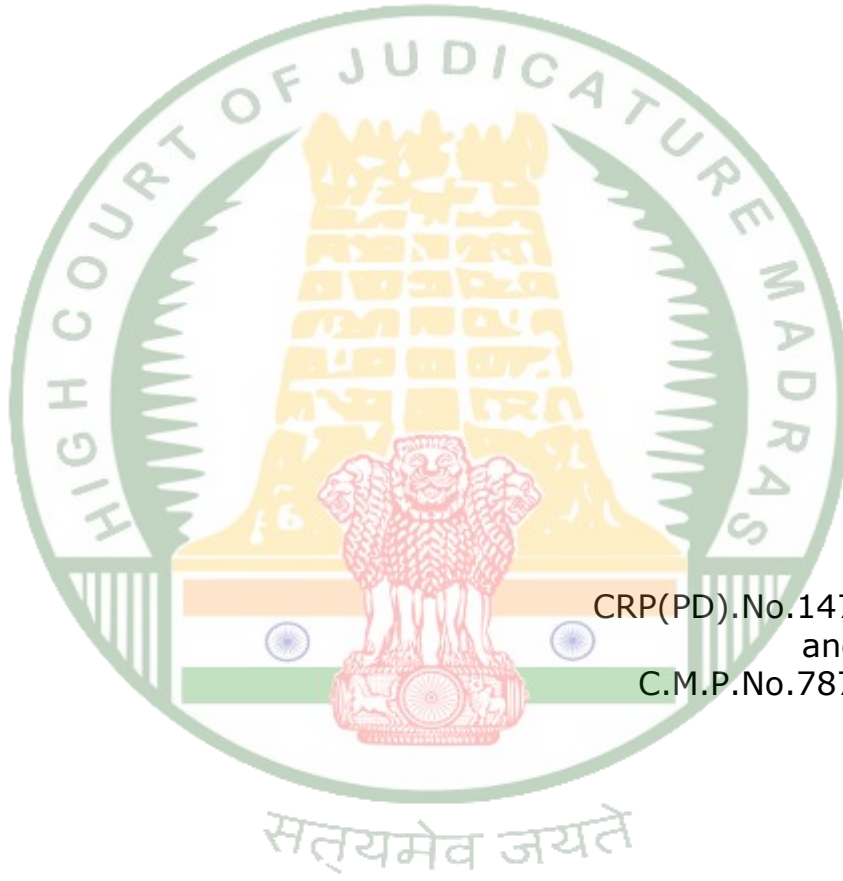
Speaking order:Yes/No

To

The Subordinate Judge,
Madurantagam.

P.VELMURUGAN.J,

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