

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3997 of 2014
& M.P.No.1 of 2014

1.Sivagangai
2.Girija

.. Petitioners

Vs.

1.Ilavaraasi
2.Raja
3.Rajeswari
4.Vimala
5.Jayalakshmi
6.Gunasegaran

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and decretal order dated 22.08.2014 made in I.A.No.632 of 2013 in O.S.No.49 of 2011 on the file of the Principal Subordinate Court, Villupuram.

For petitioners : Mr.R.Sugumaran

For R1 : M/s.J.Zeakumar
for M/s.Achari &
Antoni Associates

For R2 to R6 : Given up

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 22.08.2014 made in I.A.No.632 of 2013 in O.S.No.49 of 2011 on the file of the Principal Subordinate Court, Villupuram.

2.The petitioners are defendants 1 and 3, first respondent is the plaintiff and the respondents 2 to 6 are the defendants 2, 4 to 7 in O.S.No.49 of 2011 on the file of the Principal Subordinate Court, Villupuram. The first respondent filed the said suit for partition of the suit property. The petitioners entered appearance through Advocate on 25.07.2011 and did not file written statement even after taking number of adjournments. The petitioners and 6th respondent were set exparte on 15.03.2012 and exparte decree was passed on 27.04.2012. The petitioners filed I.A.No.632 of 2013 to condone the delay of 388 days in filing the petition to set aside the exparte decree dated 27.04.2012. According to the petitioners, first petitioner is residing in Malaysia and she was searching for some important documents to file along with the written statement. In view of the same, the written statement was not filed in time. After coming to India from Malaysia, the petitioners filed application

to set aside the exparte preliminary decree and present application to condone the delay in filing the application to set aside the exparte decree. They also filed written statement along with the said application.

3.The respondents filed counter affidavit and denied all the averments made by the petitioners. The first respondent contended that even after taking number of adjournments, the petitioners did not file written statement and the reason given by the petitioners for not filing the written statement is not valid and sufficient and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit and taking note of the fact that in the application filed by the first respondent for final decree, an Advocate Commissioner was appointed. The petitioners did not file counter affidavit. The Advocate Commissioner after inspection, filed his report. The petitioners even after taking number of adjournments, did not file objection to the report of the Advocate Commissioner and having not given valid reason for the delay of 388 days in filing the petition to set aside the exparte preliminary decree dated 27.04.2012, the learned Judge, by the judgment and decree dated

22.08.2014, dismissed the application.

5. Against the said order of dismissal dated 22.08.2014 made in I.A.No.632 of 2013 in O.S.No.49 of 2011, the petitioners have come out with the present Civil Revision Petition.

6. The learned counsel appearing for the petitioners reiterated the averments made in the affidavit and contentions raised in the grounds of revision.

7. The learned counsel for the first respondent reiterated the averments in the counter affidavit and further contended that the petitioners entered appearance in the application filed by the first respondent for passing final decree. They took time for filing counter affidavit, but after taking time, the petitioners did not file any counter. The learned Judge appointed an Advocate Commissioner. He inspected the property and filed report. The petitioners did not file any objection. Even at that time, the petitioners have not filed any application to set aside the exparte preliminary decree and contended that the present application is filed only to drag on the proceedings and prayed for dismissal of the Civil Revision Petition.

8. Heard the learned counsel for the petitioners as well as the first respondent and perused the materials available on record.

9. According to the petitioners, the first petitioner was residing in Malaysia and was searching for the document to file along with the written statement. Due to the same, the delay has occurred. From the materials on record, it is seen that the first petitioner has sworn to an affidavit on 1st August, 2012 at Malaysia and a copy of the same along with the petition to condone the delay was served on the counsel for the first respondent/plaintiff. The petitioners have not given any reason for not filing the same into Court in time. Further both the petitioners have appointed one Kannan to defend any legal action taken against them and cases pending before the Court. The petitioners have filed the present application only on 18.06.2013. They have not given any reason for the delay from 01.08.2012 to 18.06.2013. Further, the contention of the counsel for the first respondent/plaintiff that even they entered appearance in final decree application and took time for filing counter, the petitioners did not file counter and application to set aside the ex parte preliminary decree has considerable force. The reasoning given by the petitioners is not valid and sufficient to condone the

delay. The learned Judge considering all the above facts and the fact that in final decree application filed by the first respondent, the petitioner entered appearance and Advocate Commissioner was appointed and he filed his report, dismissed the application. There is no error in the reasoning of the learned Judge warranting interference by this Court.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

31.01.2018

Index : Yes/No

Speaking Order/ Non-Speaking Order

gsa

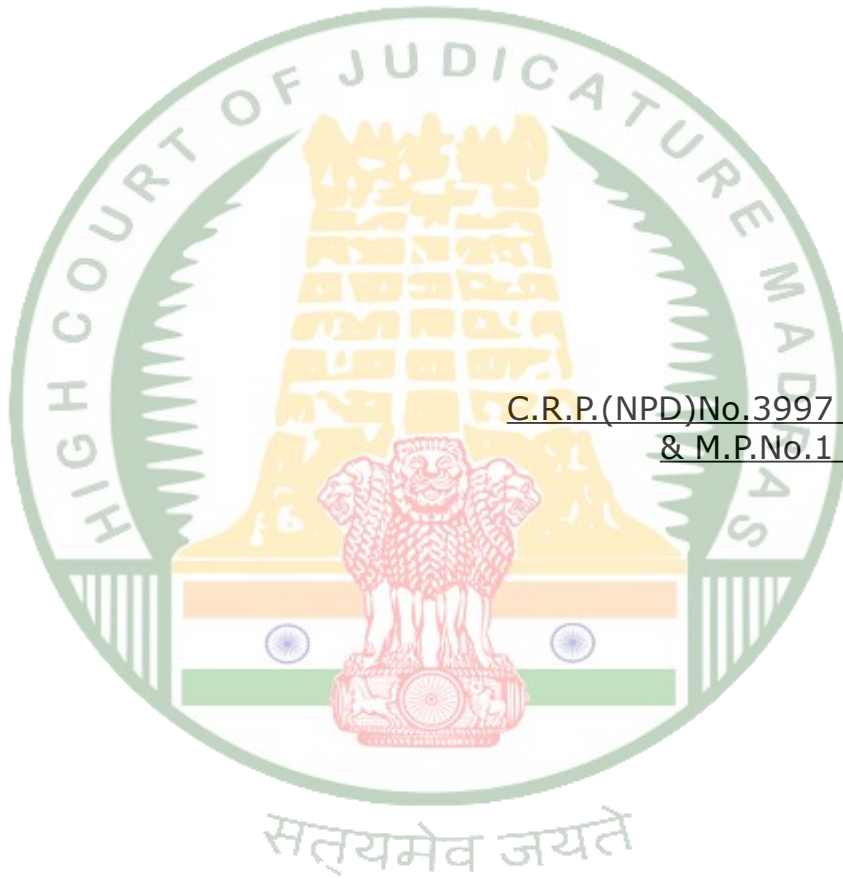
To

The Principal Subordinate Judge,
Villupuram.

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V.M.VELUMANI, J.

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