

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1156 of 2010
& M.P.No.1 of 2010

1.Gowri
2.Madhavi

.. Petitioners

Vs.

1.C.Nanjan
2.Raman
3.Krishnan
4.Omsammal
5.Savithri

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the fair and decretal order dated 07.01.2010 made in I.A.No.74 of 2009 in A.S.SR.No.2439 of 2009 on the file of the Subordinate Court, Udthagamandalam.

For Petitioners : Mr.A.U.Ilango

For R1 : M/s.Aiswarya
for M/s.Srinath Sridevan

For R2 : No appearance

For R3 : Dismissed vide Court
Order dated 19.10.2012

For RR4 & 5 : No appearance

ORDER

This Civil Revision petition is filed against the fair and decretal order dated 07.01.2010 made in I.A.No.74 of 2009 in A.S.SR.No.2439 of 2009 on the file of the Subordinate Court, Udhagamandalam.

2.The petitioners are plaintiffs and respondents are the defendants in O.S.No.174 of 2001 on the file of the District Munsif, Udhagamandalam. The petitioners filed the said suit against the respondents for partition. The said suit was dismissed by the judgment and decree dated 13.06.2008. The petitioners filed appeal in A.S.SR.No.2439 of 2009 along with an application in I.A.No.74 of 2009 to condone the delay of 402 days in filing the appeal. According to the petitioners, they are illiterates and from May 2008 onwards, they had temporarily settled at Bangalore. After they came to Ooty and approached their previous counsel, they came to know about the judgment and decree. They did not know that appeal has to be filed within 30 days.

3.The second respondent filed counter affidavit and opposed the said application and submitted that the petitioners have not

given any valid reason for the huge delay of 402 days.

4.The learned Judge considering the averments in the affidavit and counter affidavit, dismissed the application on the ground that petitioners have not explained the reason for the delay in filing the appeal.

5.Against the said order of dismissal dated 07.01.2010 made in I.A.No.74 of 2009 in A.S.SR.No.2439 of 2009, the present Civil Revision Petition is filed by the petitioners.

6.The learned counsel for the petitioners contended that petitioners were regularly contacting their previous counsel and enquired about the copies of the judgment and decree. Their Advocate informed them that copies were not ready. Only when they came to Ooty and contacted their Advocate, they were informed that the judgment and decree in the suit were made ready on 01.09.2008. The petitioners engaged the present counsel and filed appeal on 03.08.2009. The first petitioner suffered from back pain and was taking treatment. The petitioners have filed M.P.No.1 of 2010 to receive medical prescription.

7.The learned counsel for the first respondent submitted that

in the Civil Revision Petition, the document cannot be received. The petitioners have not given any valid reason for the delay and the learned Judge has considered each and every fact and dismissed the application by giving valid reason.

8. Heard the learned counsel for the petitioners as well as the first respondent and perused the materials available on record. Though notice was served on the respondent 4 and 5 and their names were printed in the cause list, there is no representation on their behalf either in person or through counsel. The Civil Revision Petition was dismissed on 19.10.2012 as against the third respondent.

9. From the materials on record, it is seen that the petitioners have not given any valid reason for the delay. The petitioners are blaming their earlier Advocate for the delay in filing the appeal. The petitioners have not stated before the learned Judge that the first petitioner was taking treatment and she was admitted in the hospital. On the other hand, the reason given by the petitioners is that they did not know that the appeal has to be filed within 30 days from the date of receipt of a copy of the judgment and decree and their counsel did not inform them about the copies being made

ready. In view of the above contradictory statement, the reason given by the petitioners are not valid. The learned Judge has considered all the above facts and dismissed the application. There is no reason or circumstances warranting interference by this Court with the order of the learned Judge dated 07.01.2010 made in I.A.No.74 of 2009 in A.S.SR.No.2439 of 2009.

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

Index :: Yes/No
Internet :: Yes/No
gsa

08.01.2018

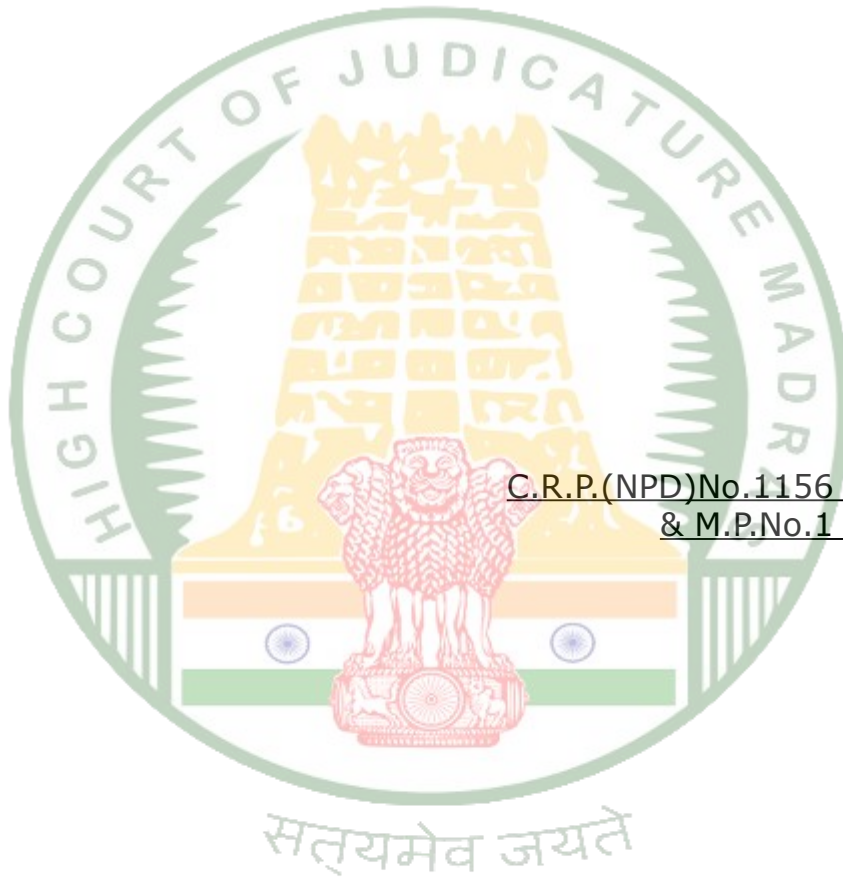
To

The Subordinate Judge,
Udhagamandalam.

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V.M.VELUMANI,J.

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