

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1907 of 2015
and M.P.No.1 of 2015
and C.M.P.No.7299 of 2017

Kanniammal

.. Petitioner

Vs.

1.C.Boopathy
2.Agilandam
3.Ponnammal
4.C.Shanmugam
5.Suseela

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C to set aside the fair and decretal order dated 06.02.2015 made in I.A.No.311 of 2013 in I.A.No.154 of 2011 in O.S.No.283 of 2010 on the file of the Subordinate Court, Tambaram.

For Petitioner : No appearance

For R1 : Mr.J.R.K.Bhavanatham

For R3 : Not ready in notice

For R2, 4 & 5 : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 06.02.2015 made in I.A.No.311 of 2013 in I.A.No.154 of 2011 in O.S.No.283 of 2010 on the file of the Subordinate Court, Tambaram.

2.The petitioner is second defendant, first respondent is plaintiff and respondents 2 to 5 are the defendants 1, 3 to 5 in O.S.No.283 of 2010 on the file of the Subordinate Court, Tambaram. The first respondent filed the said suit for partition, separate possession and declaration that settlement deed dated 09.03.2007 executed by the 4th respondent in favour of the 5th respondent as null and void. The petitioner entered appearance through Advocate, subsequently, she did not contest the matter. An exparte preliminary decree was passed on 30.11.2010. The petitioner filed I.A.No.311 of 2013 to condone the delay of 639 days in filing the petition to condone the delay in filing the petition to restore I.A.No.154 of 2011 which was dismissed for default.

3.According to the petitioner, originally, the suit was filed before the Court at Chengalpattu and subsequently, the suit was transferred to Court at Tambaram. The Advocate engaged by the petitioner is based in Chengalpattu. He did not follow the case in the Court at Tambaram and exparte preliminary decree was passed on 30.11.2010. The petitioner engaged present counsel and filed application to set aside the exparte preliminary decree on 5th March 2010. The said application was returned on the ground that

earlier application I.A.No.154 of 2011 in O.S.No.283 of 2010 filed for condoning the delay to set aside the exparte decree was dismissed for default. The petitioner has filed the present application to condone the delay of 639 days in filing the petition to condone the delay in filing the petition to restore I.A.No.154 of 2011. According to the petitioner, his previous counsel did not properly follow the case and did not inform about the stage of the case. The delay is neither wilful nor wanton.

4.The first respondent filed counter affidavit and denied all the averments made in the affidavit and contended that the petitioner did not follow the suit diligently and only to drag on the proceedings, she has come out with the present application. In the final decree application, I.A.No.1208 of 2011, the petitioner entered appearance and took number of adjournments for filing counter affidavit. Subsequently, the matter was referred to Lok Adalat for settlement. The petitioner did not appear on number of occasions and the matter was returned to the Court. The petitioner has not given any reason for condoning the huge delay. The petitioner was aware of dismissal of I.A.No.154 of 2011 in March 2012 itself, but she has filed the present application only in March 2013 and did not explain the delay from March 2012.

5.The learned Judge considering averments in the affidavit, counter affidavit and the materials available on record, dismissed the application.

6.Against the said order of dismissal dated 06.02.2015 made in I.A.No.311 of 2013 in I.A.No.154 of 2011 in O.S.No.283 of 2010, the petitioner has come out with the present Civil Revision Petition.

7.The first respondent filed C.M.P.No.7299 of 2017 for interim injunction restraining the respondents 1 and 3 from putting up further construction and completing the construction on Gramanatham S.No.124, T.S.No.17, bearing D.No.28, Bakthavachalam Nagar, 1st Street, Nanganallur, Chennai 114 measuring 2400 sq.ft at Thalakancherri Village, Alandur Taluk, Kancheepuram District.

8.The learned counsel for the first respondent submitted that the petitioner and 3rd respondent has started unauthorised construction in the property to gain sympathy. The 4th respondent lodged a complaint on 10.03.2017 with the Inspector of Police, S-9 Pazvanthangal Police Station, Chennai 600 114 stating that the

petitioner and 3rd respondent taking advantage of the pendency of the Civil Revision Petition are putting up further construction.

9. When the matter was taken up for hearing on 06.03.2018, there was no representation for the petitioner. Hence the matter was directed to be posted today under the caption 'for dismissal'. Today also there is no representation for her either in person or through counsel. Heard the learned counsel for the first respondent and perused the materials available on record. Though notice was served on the respondents 2, 4 and 5 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

10. From the contentions raised in the grounds of revision, it is seen that when the suit was transferred from Court at Chengalpattu to Court at Tambaram, earlier counsel of the petitioner who is based in Chengalpattu did not follow the case and exparte preliminary decree was passed. This grounds raised by the petitioner is without merits. After preliminary decree was passed on 30.11.2010, the petitioner filed I.A.No.154 of 2011 to condone the delay in filing the petition to set aside the exparte decree. The said application was dismissed on 01.04.2011 for non-payment of batta. This shows that

even after transfer of the suit to the Court at Tambaram and having filed application to condone the delay in setting aside the exparte preliminary decree, the petitioner has not diligently followed the case by contacting her Advocate. In addition to that, subsequently, when an application was filed to set aside the exparte preliminary decree, the same was returned in March 2012 on the ground that application I.A.No.154 of 2011 filed for the same relief was dismissed for default. The petitioner has not filed any application to restore I.A.No.154 of 2011 immediately. She has filed application only in March 2013. She has also not given any reason for the delay atleast from March 2012 to March 2013.

11.From the above facts, it is seen that the petitioner is not diligent enough to follow the suit properly and has not given any valid and sufficient reason to condone the delay of 639 days in filing the petition to condone the delay in restoring I.A.No.154 of 2011. The learned Judge has considered all the above facts and dismissed the application. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 06.02.2015 made in I.A.No.311 of 2013 in I.A.No.154 of 2011 in O.S.No.283 of 2010 .

12.In the result, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.03.2018

Index :: Yes/No
gsa

To

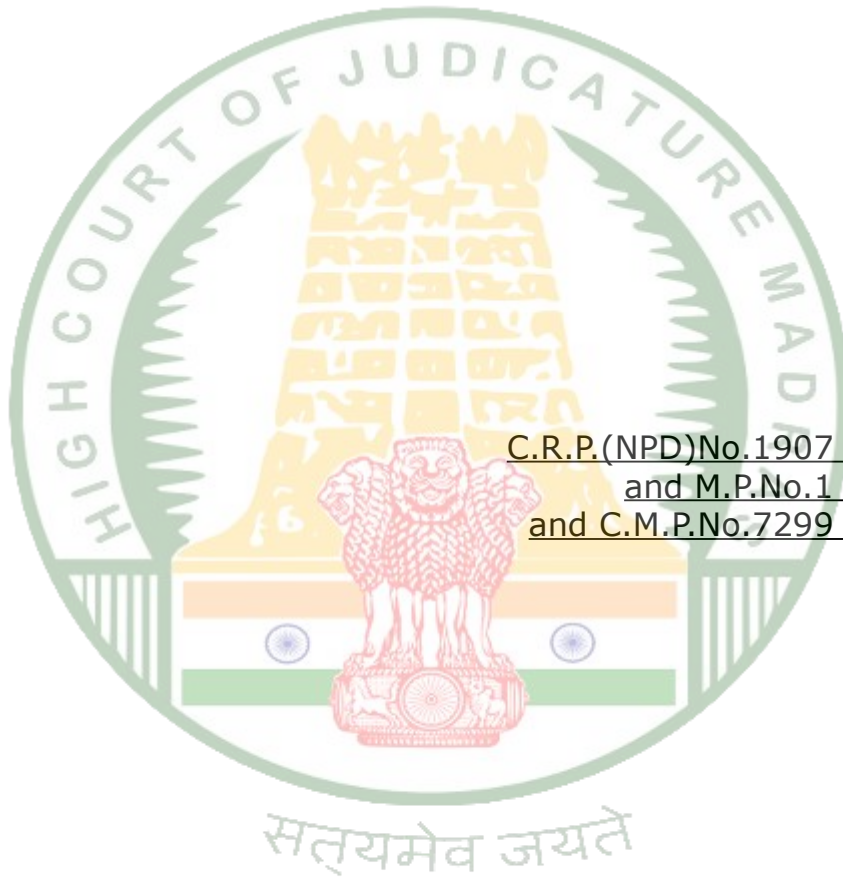
The Subordinate Judge,
Tambaram.



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V.M.VELUMANI,J.

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