

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.652 of 2015
& M.P.No.1 of 2015

1.Ponnusamy
2.Palaniammal
3.Santhi

.. Petitioners

Vs.

1.Jayamani
2.Sundaram

(R2 was set exparte before the Trial
Court and hence notice to R2 is not
necessary in this CRP)

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, against the fair and decretal order dated
13.10.2014 made in I.A.No.1201 of 2013 in O.S.No.594 of 2005 on
the file of the Additional District Munsif Court, Tiruchengode.

For Petitioners : Mr.N.Manokaran

For R1 : No Appearance

For R2 : Exparte

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 13.10.2014 made in I.A.No.1201 of 2013 in O.S.No.594 of 2005 on the file of the Additional District Munsif Court, Tiruchengode.

2. The petitioners are defendants 1, 4 and 5, first respondent is plaintiff and second respondent is second defendant in O.S.No.594 of 2005 on the file of the District Munsif Court, Tiruchengode. First respondent filed said suit for partition against the petitioners 1 and 2, second respondent and third defendant/minor. Pending suit, third defendant/minor died and his mother, third petitioner was brought on record. The first petitioner and third defendant filed written statement and are contesting the suit. The suit was dismissed against the second defendant/second respondent herein on 27.11.2007 on the failure of the first respondent for taking steps to serve the second respondent. The first respondent filed I.A.No.1201 of 2013 to condone the delay of 2160 days in filing the petition to restore the suit against the second respondent.

3. According to the first respondent, she came to know about

the dismissal of the suit against the second respondent only when the third petitioner filed written statement. Her previous counsel did not inform about the dismissal of the suit against the second respondent. The suit was dismissed for default. First respondent filed two applications in I.A.No.61 of 2011 to condone the delay of 9 days in filing the petition to restore the suit and I.A.No.913 of 2011 to restore the suit. Both the applications were allowed on payment of costs. In the said applications, the second respondent was served with notice by publication. The second respondent is residing with the petitioners 1 and 3. They have deliberately suppressed this fact and only when the first respondent engaged present counsel, she came to know about the dismissal of the suit against the second respondent.

4. The petitioners filed counter affidavit and denied all the averments made by the first respondent in the said application. According to the petitioners, first respondent has not given any valid reason for condonation of huge delay of 2160 days.

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

the application on payment of costs of Rs.1,000/-.

6. Against the said order dated 13.10.2014 made in I.A.No.1201 of 2013 in O.S.No.594 of 2005, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners and perused the materials available on record. Though notice was served on the first respondent and her name is printed in the cause list, there is no representation on behalf of her either in person or through counsel. In the application itself, second respondent remained exparte and therefore, notice against second respondent is dispensed with.

8. First respondent has filed suit for partition against the petitioners 1 and 2, second respondent and third defendant. Pending suit, third defendant/minor died and his mother, the third petitioner was brought on record. The suit against the second respondent was dismissed on 27.11.2007 on the failure of the first respondent taking steps to serve the second respondent. Subsequently, first respondent filed the present I.A.No.1201 of 2013 to condone the delay of 2160 days in filing the petition to restore

the suit against the second respondent. The said application was allowed on payment of costs of Rs.1,000/-.

9. According to the first respondent, her previous counsel did not inform about the dismissal of the suit against the second respondent. Only when she engaged present counsel, she came to know about the dismissal of the suit against the second respondent. The learned Judge allowed the application on the ground that the suit is for partition and to avoid multiplicity of proceedings. In addition to the said finding, it is pertinent to note that first respondent filed I.A.No.61 of 2011 to condone the delay of 9 days in filing the petition to restore the suit and I.A.No.913 of 2011 to restore the suit. The petitioners and second respondent were served by publication and the suit was restored against all the defendants. In view of the fact that suit was restored against all the defendants as per the order in I.A.No.913 of 2011, there is no infirmity in the impugned order.

10. The learned Judge considered all the aspects in proper perspective and rightly allowed the application on payment of costs. There is no irregularity or illegality warranting interference with the order of the learned Judge dated 13.10.2014.

11. In the result, the Civil Revision Petition is dismissed as devoid of merits. As the suit is of the year 2005, the learned Judge is directed to dispose O.S.No.594 of 2005 as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

02.01.2018

Index : Yes/No

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To

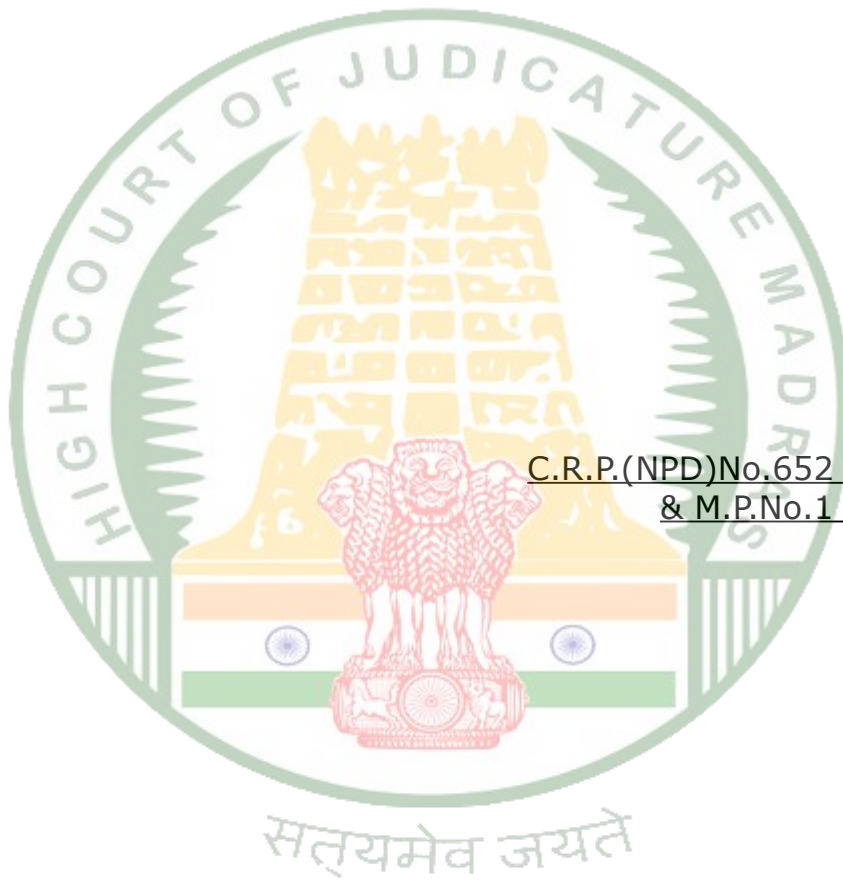
The Additional District Munsif

Tiruchengode.

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V.M.VELUMANI, J.

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