

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.731 of 2015

Natarajan ... Petitioner

Vs.

Rangasamy .. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and decretal order dated 03.11.2014 made in I.A.No.10 of 2012 in A.S.No.18 of 2002 on the file of the Subordinate Judge, Dharmapuri.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.R.Selvakumar

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 03.11.2014 made in I.A.No.10 of 2012 in A.S.No.18 of 2002 on the file of the Subordinate Judge, Dharmapuri.

2.The petitioner is appellant and respondent is the respondent in A.S.No.18 of 2002 on the file of the Subordinate Judge, Dharmapuri. When the appeal was posted for hearing on 09.09.2014, there was no representation on behalf of the petitioner and the appeal was dismissed for default. The petitioner filed present application in I.A.No.10 of 2012 to condone the delay of 2239 days in filing the petition to restore the appeal which was dismissed for default. According to the petitioner, he was suffering from illness from August 2004 and could not contact his Advocate. When the petitioner contacted his Advocate in the year 2010, he came to know about the dismissal of the appeal. He did not receive any communication from his Advocate earlier about the dismissal of the appeal and therefore, he could not file the application in time.

3.The respondent filed counter affidavit and denied all the averments made by the petitioner and contended that the petitioner has not filed any document to prove that he was suffering from illness. On the other hand, he was hale and healthy. The respondent has filed application for issue of patta in respect of suit property and notice was sent to the petitioner. On receipt of notice, in order to harass the respondent, the petitioner has come out with the present

application with false averments and prayed for dismissal of the application.

4.The learned Judge, considering the averments in the affidavit, counter affidavit and the fact that the petitioner has not let in any oral and documentary evidence to substantiate his claim that he was not well, dismissed the application holding that the reason given by the petitioner for the delay of 6 years is unbelievable.

5.Against the said order of dismissal dated 03.11.2014 made in I.A.No.10 of 2012 in A.S.No.18 of 2002, the present Civil Revision Petition is filed by the petitioner.

6.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7.From the materials on record, it is seen that the petitioner has filed present application to condone the delay of 2239 days in filing application to restore the appeal. The petitioner has contended that he was not well and therefore, he could not contact the Advocate earlier and file petition to restore the appeal in time. According to the petitioner, he was not well for 6 years. The

petitioner has not substantiated this contention before the I Appellate Court by letting in any oral and documentary evidence. The contention of the learned counsel for the respondent that petitioner has come out with the present petition only to harass the respondent when respondent is taking steps to get the revenue record mutated showing him as owner has considerable force and acceptable. The learned Judge considering all these facts, dismissed the application. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 03.11.2014 made in I.A.No.10 of 2012 in A.S.No.18 of 2002.

8.In the result, this Civil Revision Petition is dismissed. No costs.

सत्यमेव जयते

09.01.2018

Index :: Yes/No

Internet :: Yes/No

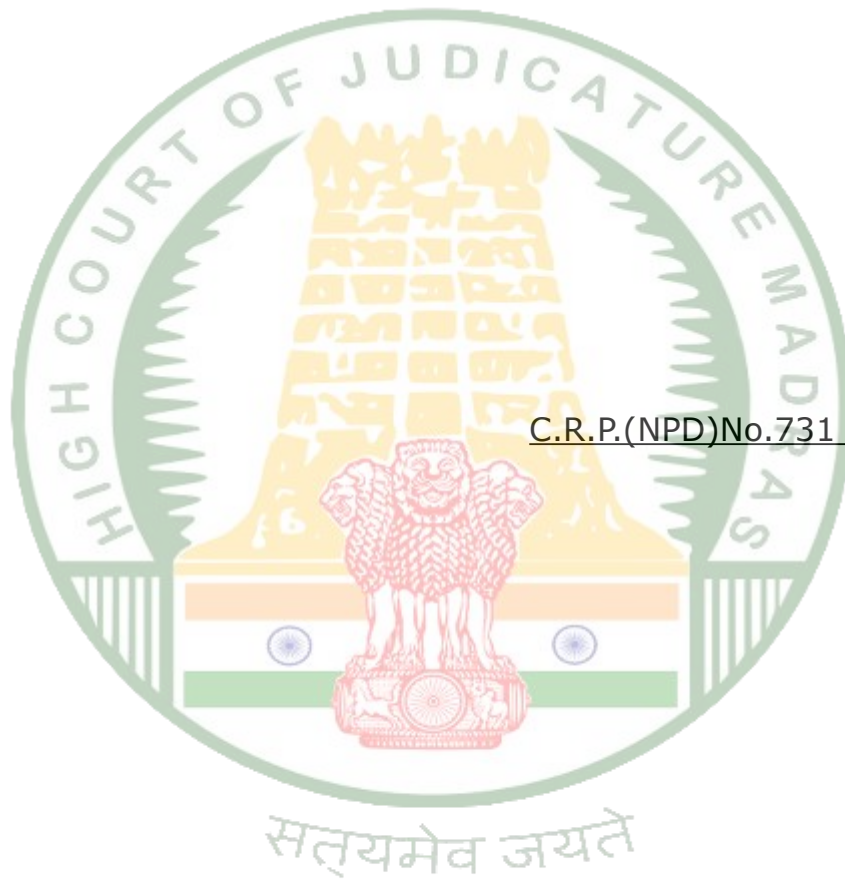
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To

The Subordinate Judge,
Dharmapuri.

V.M.VELUMANI,J.

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