

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2440 of 2010

1. Lakshmi
2. Selvaraj
3. Murugesan
4. Rajenderan (died)
5. Rajeshwari
6. Jayachitra
7. Paramasivam
8. Devika
9. R. Deepan Kumar
10. Arvind Kumar
12. Lakshmi

[Petitioners 8 to 11 brought on record as LR's of the deceased 4th petitioner vide court order dated 19.09.2018 made in c.M.P.Nos.16949 to 16951/2018 in CRP No.2440/2010]

... Petitioner s

v.

1. Saraswathi Periamani (died)
2. Sarojini @ Pappathi
3. Sakharaiappan (deceased)

4. Shanmugam
5. Ramamurthi
6. Kuppusamy
7. Vijayalakshmi
8. Pushpavalli
9. Velumani
10. Subbulakshmi
11. Balasubramanian

[Respondents 7 to 11 brought on record as LR's of the deceased 1st respondent vide court order dated 24.10.2018 made in C.M.P.Nos.190389 to 19041/2018 in CRP No.2440/2010] ... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 01.04.2010 passed in I.A.No.587 of 2008 in O.S.No.153 of 2002 on the file of the District Munsif, Avinashi.

For Petitioners : Mr. K.Govi Ganesan
For Respondent s : Mr. Ma.P. Thangavel – For R2,
R4 to R6 and R7 to R11

R1 & R3 Died – Steps taken

ORDER

Challenging the fair and final order passed in I.A.No.587 of 2008 in O.S.No.153 of 2002 on the file of the District Munsif Court, Avinashi, the defendants 1 to 6 and 10 have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No.153 of 2002 for partition and for other reliefs. Since the defendants failed to appear before the Trial Court, they were set *ex parte* and an *ex parte* preliminary decree was passed on 13.08.2003. Thereafter, the defendants 1 to 6 and 10 filed an application in I.A.No.587 of 2008 to condone the delay of 1053 days in filing the application to set aside the *ex parte* preliminary decree.

3. The 3rd defendant, viz., 3. Murugesan filed an affidavit stating that he was suffering from jaundice and was taking treatment and therefore, he could not file the application in time to set aside the *ex parte* preliminary decree.

4. Though there are 13 defendants in the suit, only the 3rd defendant has filed an affidavit stating that he was suffering from jaundice. The 3rd defendant has not stated anything about the other defendants, who were very much available to give instructions to their counsel.

5. It is settled position that unless a party seeking for condonation of the delay gives sufficient cause for the delay, the delay should not be condoned.

6. In the judgment reported in **2015 (1) SCC 680 [H.Dohil Constructions Company Private Ltd. v. Nahar Exports Limited and another]**, the Hon'ble Supreme Court held that unless sufficient cause is shown by the party for the condonation of the delay, the delay should not be condoned.

7. The ratio laid down by the Hon'ble Supreme Court in the judgment reported in **2015 (1) SCC 680 (cited supra)** squarely applicable to the facts and circumstances of the present case.

8. When the other defendants were very much available for filing an application to set aside the *ex parte* preliminary decree, the reasoning given by the 3rd defendant alone cannot be accepted. The Trial court has rightly declined to condone the inordinate delay of 1053 days in filing the application to set aside the *ex parte* preliminary decree.

9. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

27.09,2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

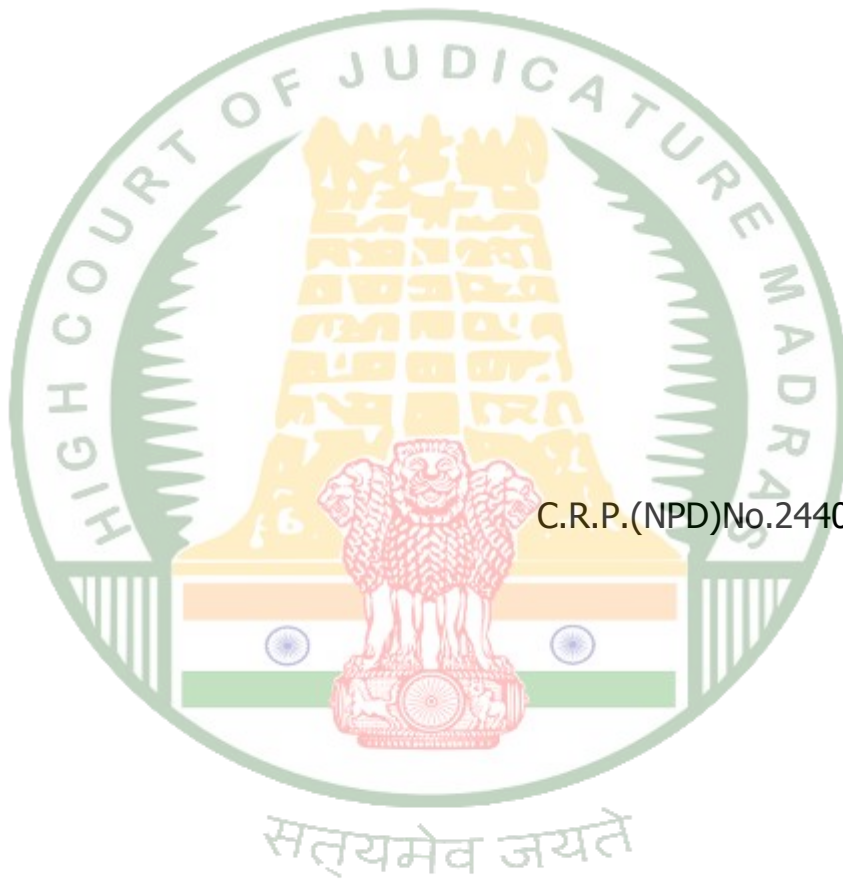
The District Munsif,
Avinashi.

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C.R.P.(NPD).No.1357 of 2012

M.DURAISWAMY, J.

Rj



C.R.P.(NPD)No.2440 of 2010

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27.09.2019