

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM

THE HONOURABLE MS. JUSTICE N.SATHISHKUMAR

C.R.P.No.2918 of 2010

and

M.P.No.1 of 2010

1.M.Thiyagarajan
2.T.Gandhimathi
3.T.Sangeetha

..... Petitioners

Vs

Marimuthu

..... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code praying to set aside the order and decreetal order dated 02.07.2010 made in I.A.No.31 of 2008 in O.S.No.301 of 2006 on the file of the District Munsif Court, Tiruvarur.

For Petitioner : Mr.J.Jothi

For Respondents : No appearance

O R D E R

This Civil Revision Petition has been filed as against the dismissal of the application filed to condone the delay of 372 days in filing the application to set aside the exparte preliminary decree passed against the defendants.

2.The brief facts lead to the filing of this revision are as follows:

The plaintiff has filed a suit for partition on the ground that the suit properties are ancestral properties and he is entitled to half share of the suit properties. He has filed the suit against his father and sisters. It appears that the defendants were set exparte on the ground that they have not filed a written statement. Thereafter, they filed an application to set aside the exparte decree with a delay of 372 days. The trial Court has dismissed the application on the ground that the delay has not been properly explained.

3. Heard the learned Counsel for the petitioners and there is no representation for the respondents. The learned Counsel appearing for the revision petitioners submitted that the reasons assigned for condoning the delay is bonafide, since the revision petitioners are from rural background and they have not been informed about the Court proceedings by their Counsel who was engaged by them and therefore, they were set exparte. Her further contention is that there were substantial grounds of defence in the suit. Unless the exparte decree is set aside, their rights would be seriously affected. Hence, she prayed for allowing this revision petition.

4. I have perused the materials on record and order of the trial Court. No doubt, each day delay has to be properly explained to condone the delay of 372 days in filing an application to set aside the exparte preliminary decree. At the same time, when sufficient reasons were explained by the parties, the Court should adopt liberal approach to advance the substantial justice.

5. On perusal of the plaint, it is seen that the suit itself is laid for claiming half share in the suit properties on the ground that the suit properties are the ancestral properties. The suit has been laid in the year 2006. The defendants 2 and 3 are the daughters. I am of the opinion that in view Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005), their rights involved in the suit properties.

6. Therefore, in view of the above, I am of the opinion that delay of 372 days in appearing before the Court to set aside the exparte decree has to be received with liberal approach, considering the merits of the case. Accordingly, the order of the trial Court is set aside. The trial Court shall hear the application filed in Order IX Rule 13 of Civil Procedure Code and pass order on merits and thereafter, dispose of the suit within six months from the date of receipt of the copy of this order.

7. In the result, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ay

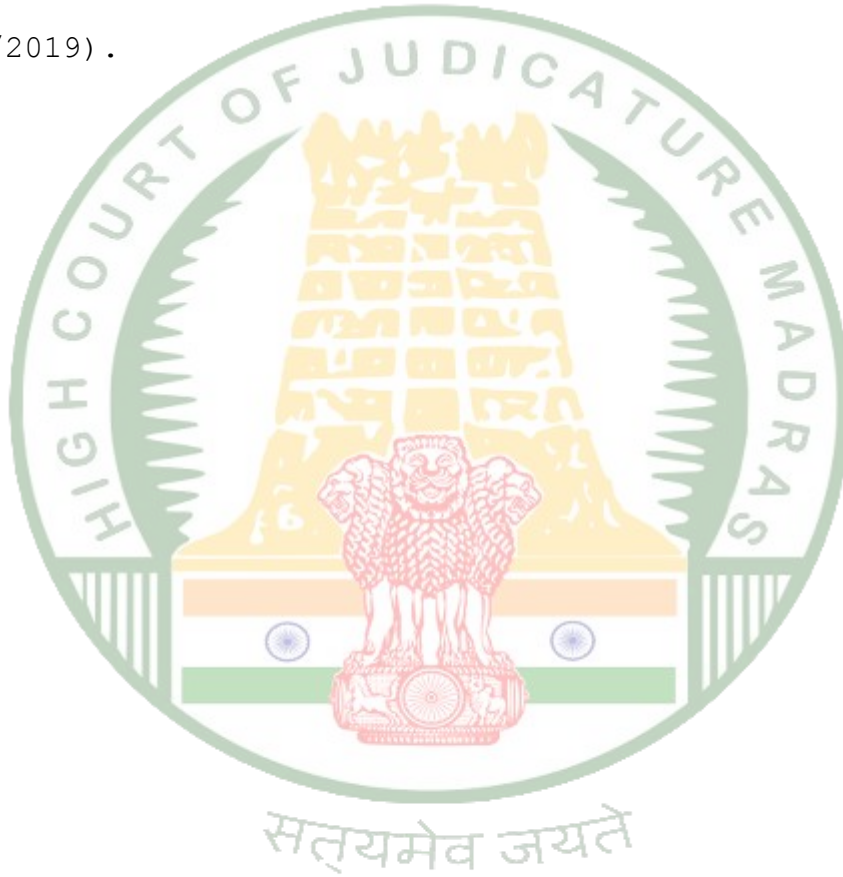
To

The District Munsif,
Tiruvarur.

+1 cc to Mr.J.Nandagopal, Advocate, S.R.No.20086

C.R.P.No.2918 of 2010
and
M.P.No.1 of 2010

KJ(CO)
SSM(04/04/2019).



WEB COPY