

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD)No.359 of 2011

Sampoornam

..

Petitioner

versus

1.Nithyakalyani
2.Ponni @ Annapoorani
3.Paniakkal
4.Ganapathy

..

Respondents

PRAYER: Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure, against the order dated 08.10.2010 made in I.A.No.447 of 2010 made in O.S.No.207 of 1998 on the file of the learned District Munsif, Rasipuram.

For Petitioner : Mr.A.V.Arumugam
For Respondent Nos.1 & 2 : Mr.G.Pugazhenth
For Respondent No.3 : Mr.N.Srinivasan
For Respondent No.4 : No Appearance

ORDER

Aggrieved over the dismissal of the application filed to condone the delay of 1518 days in representing the application filed to restore the suit, which was dismissed for default, the present Civil Revision Petition is filed.

2. The fact remains that the first plaintiff has originally filed the suit, after his death, the second plaintiff substituted as a legal representative. The suit has been dismissed for default on 17.07.2003. An application has been filed to restore the above suit on 14.08.2003. Thereafter, it appears that the above application has been returned for certain defects and the defects were not complied for some times including the signature of the counsel has not found. Hence, the above application has not been represented in time and there was a delay of 1518 days.

3. The main contention of the learned counsel appearing for the revision petitioner is that the revision petitioner has undergone surgery for removing the uterus at the relevant point of time. Further, the application has also got mixed up with the advocate's Office. Hence, the above application has been filed to condone the delay of 1518 days in representing the application filed to restore the suit, which was dismissed on 17.07.2003.

4. The learned counsel appearing for the respondents submitted that the application has been mixed up with the counsel's Office is improbable. In the trial Court, the petitioner herself examined as P.W.1 and Ex.A.1 to Ex.A.7 were marked. The trial Court found that at the relevant point of time

i.e. in the year 2003, the revision petitioner has undergone surgery. However, the trial Court found that the delay in representation has not been properly explained and hence, dismissed the application.

5. No doubt, the delay appears to be huge but the suit itself for partition of several properties and also to avoid certain documents, the learned counsel appearing for the revision petitioner brought to the notice of this Court that there are registered Will in her favour and also submitted that in other properties also, litigations are pending in S.A.Nos.750 and 752 of 2011. The trial Court having found that the petitioner has undergone the surgery, dismissed the application mainly on the ground that even after the surgery, there was four years delay in representing the application.

6. It is to be noted that the application to restore the suit was filed within a time but at the relevant point of time, she has undergone the surgery, this fact is not disputed. The above application has been returned for 11 times mainly on the ground that the counsel has not properly signed. It is to be noted that when the counsel committed some mistakes, the litigant cannot be suffered for the mistake of the counsel.

7. Considering the fact that at the relevant point of time, the petitioner has undergone major surgery by removing the uterus. Only due to counsel on record mistake application not represented in time, which caused the delay, I am of the view that in the interest of substantial justice, an opportunity to be given to the petitioner to establish the right in various properties. Hence, once the sufficient cause is shown, this Court has to extend the discretion liberally in order to advance the substantial justice.

8. In the result, the Civil Revision Petition is allowed and the order of the trial Court passed in in I.A.No.447 of 2010 made in O.S.No.207 of 1998 dated 08.10.2010 is hereby set aside and the delay is condoned. The trial Court is directed to dispose of the suit, within a period eight months from the date of receipt of a copy of this order. No costs.

28.03.2019

Speaking Order/Non Speaking Order

Index : Yes / No

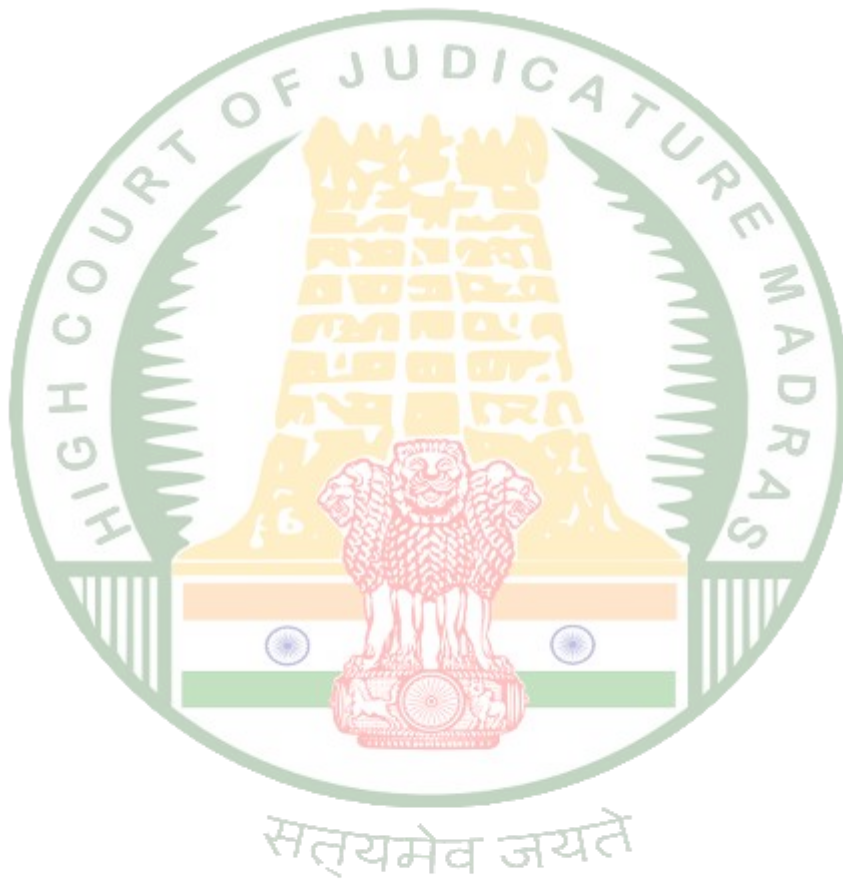
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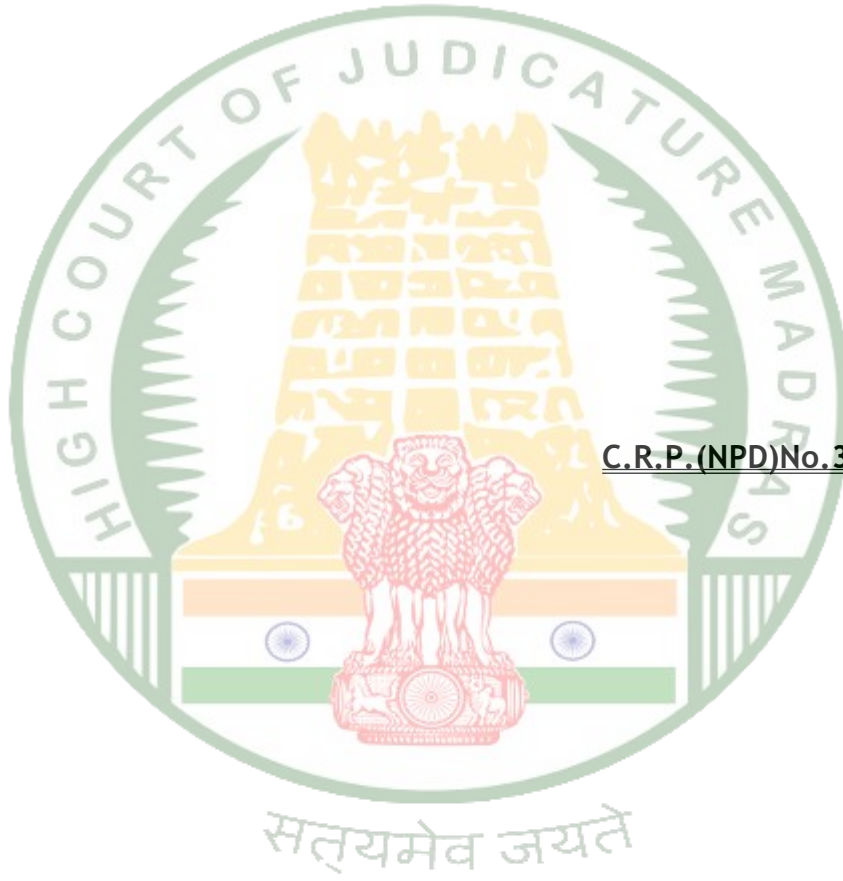
To

The District Munsif,
Rasipuram.



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N.SATHISH KUMAR, J.,
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