

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (NPD) No.626 of 2011 and
M.P.No.1 of 2011

Chezhiyan

... Petitioner

Vs.

1. Jeevabai
2. Amarnath Singh
3. Bagath Singh
4. Thukkaram Singh
5. Dhan Singh
6. Balasingh

... Respondents

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India against the fair and decreetal order dated 26.10.2010 passed in I.A.No.237 of 2009 in unnumbered A.S.- of 2009 by the Principal District Judge, Villupuram.

For Petitioner : Mr.R.Krishnaprasad
For Respondents : Mr.N.Suresh (for R1 to R3)
No appearance for R4 to R6

ORDER

The civil revision petitioner is the petitioner in I.A.No.237 of 2009 in unnumbered A.S.- of 2009 on the file of the Principal District Judge, Villupuram. The respondents 1 to 3 filed a suit in O.S.No.320 of 2002 before the Principal Subordinate Judge, Villupuram for the following reliefs

- (i) directing the first defendant to pay maintenance of Rs.26,000/- per month.
- (ii) directing the first defendant to pay past maintenance of Rs.78,000/- to the plaintiff by creating a charge over the first defendant's share in the suit properties.
- (iii) directing the first defendant to render accounts for future mesne profits in respect of the plaintiffs' 2/3 share in the suit properties.

2. The suit was contested by the defendants 1, 2 and 4. The learned Principal Subordinate Judge, vide his decree and judgment dated 31.08.2007 decreed the suit in favour of the plaintiffs. Aggrieved over the same, the 4th defendant /the present civil revision petitioner filed an appeal before the Principal District Judge, Villupuram along with a petition in I.A.No.237 of 2009 under Section 5 of the Limitation Act praying to condone the delay of 316 days in filing the appeal. The learned Principal

District Judge, Villupuram vide his fair and decretal order dated 26.10.2010, dismissed the said application. Aggrieved over the same, the present civil revision petition is filed.

3. The main reason assigned in I.A.No.237 of 2009 in unnumbered A.S.--/2009 is that the certified copies of the decree and judgment in O.S.No.320 of 2002 got mixed up with some other files and that the petitioner could trace out the same only after a year.

4. Mr.R.Krishnaprasad, learned counsel appearing for the revision petitioner contended that as far as Section 5 of the Limitation Act is concerned, the court should adopt a liberal approach and that the rule of limitation is not to destroy the rights of parties. His further contention is that as per the Power of Attorney deed dated 18.11.1999 (Ex.B2) executed by the defendants 1 to 3 and one Padma Bai in favour of the 4th defendant, the 4th defendant had sold a portion of the suit property in favour of one Kandasamy and in such circumstances, the civil revision petitioner should be given an opportunity to file an appeal against the decree and judgment passed in O.S.No320 of 2002 by the Principal Subordinate Judge, Villupuram. He would further contend that though the petitioner has shown sufficient

cause to condone the delay, the Principal District Judge, Villupuram had wrongly dismissed the application.

5. Per contra, Mr.N.Suresh learned counsel appearing for the respondents 1 to 3 would contend that the defendants 1 to 3 and one Padma Bai executed a power of attorney with regard to the 6th item of the suit properties in favour of the present revision petitioner and that during the pendency of the suit in O.S.No.320 of 2002, the revision petitioner sold a portion of the 6th item of the suit property to one Kandasamy and therefore, the sale deed executed during the pendency of the lis is hit by Section 52 of the Transfer of Property Act. He would further contend that the other defendants did not challenge the decree and judgment passed in O.S.No.320 of 2002 and the present civil revision petitioner based on the power of attorney executed by the defendants 1 to 3 and Padmabai, is making an attempt to challenge the decree and judgment. It is his contention that the petitioner has not shown sufficient cause to condone the delay of 316 days in filing the appeal and that only at the instance of the first defendant, the civil revision petitioner has filed the said petition.

6. A perusal of the records shows that the 4th defendant in the said suit had mainly contended that the 6th item of the suit properties exclusively belonged to one Kamalabai and that the defendants 1 to 3 and one Padmabai executed a power of attorney (Ex.B2) in his favour. His further contention is that, since he had sold a portion of the suit properties in favour of one Kandasamy on 15.11.2002, a charge cannot be created for executing the maintenance decree passed in favour of the plaintiffs in O.S.No.320 of 2002.

7. It is clear from the records that the 4th defendant, during the pendency of the suit in O.S.No.320 of 2002, had executed the sale deed dated 15.11.2002 (Ex.B3). It is also pertinent to point out that the suit in O.S.No.320 of 2002 was filed claiming maintenance from the first defendant to the plaintiffs and a charge is also created over the suit properties. In the judgment and decree passed in O.S.No.320 of 2002 it has been held that all the suit properties are the joint family properties of the defendants 1 to 3. As rightly pointed out by the learned counsel appearing for the respondents 1 to 3, the defendants 1 to 3 did not file any appeal against the decree and judgment passed in O.S.No.320 of 2002. On the other hand, the 4th defendant, who is the power of attorney holder with regard to the item

No.6 of the suit property alone is challenging the decree and judgment passed in O.S.No.320 of 2002. The alleged alienation made by the civil revision petitioner/4th defendant in favour of one Kandasamy is also hit by Section 52 of the Transfer of Property Act, since the sale deed dated 15.11.2002 (Ex.B3) is subsequent to the filing of the suit in O.S.No.320 of 2002. Therefore, there is no arguable points in the appeal.

8. Coming to the facts of the present civil revision petition, the main contention of the civil revision petitioner is that the certified copies of the decree and judgment got mixed up with some other files and therefore, he could not file the appeal within the time prescribed under the Code of Civil Procedure. The learned Principal District Judge had observed that the reason assigned by the petitioner cannot be accepted. It is further observed by him that the appeal is filed along with a petition to condone the delay only with an intention to prevent the plaintiffs from claiming maintenance from the first defendant. It is evident from the records that the petitioner has not explained each and every day's delay in filing the appeal and as already observed by this court, the alienation made by him, subsequent to the filing of the suit is hit by Section 52 of the Transfer of Property Act. The present revision petitioner is only a power of attorney

holder of defendants 1 to 3. In any event, since he has not shown sufficient cause for condoning the delay of 316 days in filing the appeal, I hold that the orders passed by the Principal District Judge, Villupuram is perfectly in order and the civil revision petition is liable to be dismissed.

9. In the result,

(i) The civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The fair and decreetal orders dated 26.10.2010 passed in I.A.No.237 of 2009 in unnumbered A.S.- of 2009 by the Principal District Judge, Villupuram is upheld.

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Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
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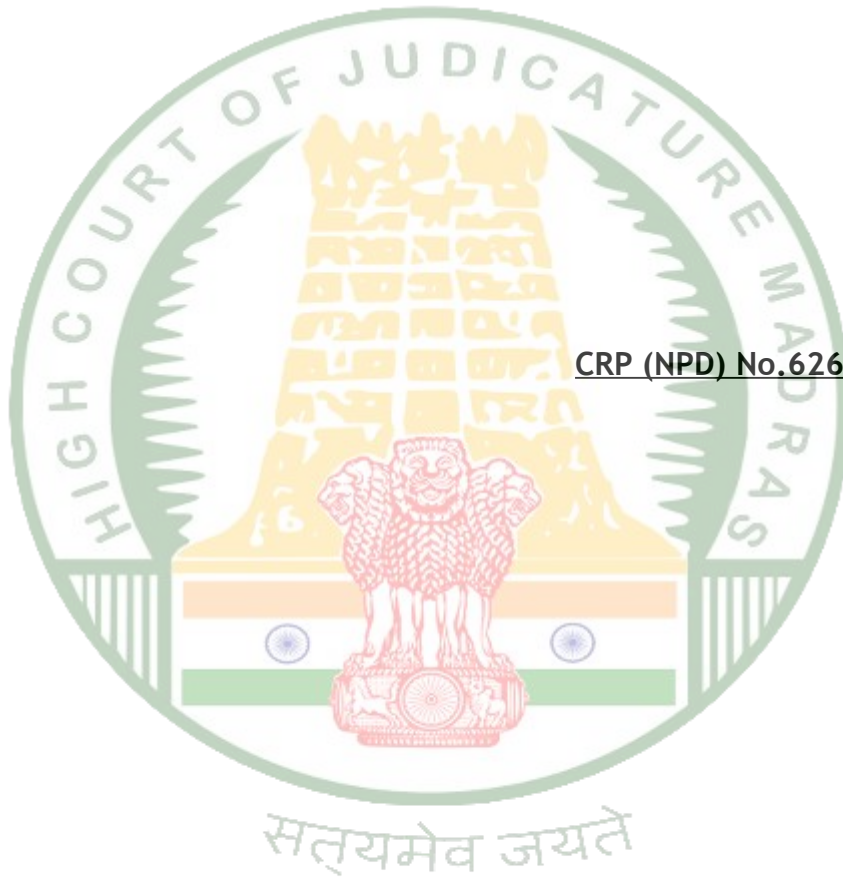
To

The Principal District Judge, Villupuram.

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R.HEMALATHA,J.
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