

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P. (NPD) No. 118 of 2015

and

M.P. No. 1 of 2015

1. Periammini
2. Rangaraj Gounder
3. Srinivasaganesh
4. Rajeswari
5. Parameswari
6. Palanisamy Gounder
7. Nachimuthu Gounder

...Petitioners

Vs

1. Karumalaiappa Gounder (Deceased)
2. Kaliasammal
3. V.K.Seenithurai
4. Sellathal @ Chinna ammani (Deceased) (Proposed Party)
5. Indrajith
6. Kanagarathnam
7. Sathyabama

8. Nandini

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decretal order dated 08.10.2014 passed in I.A.No.586 of 2009 in O.S.No.120 of 2002 on the file of the Sub Court, Pollachi.

For Petitioners : Mr.S.Kaithamalai Kumaran

For Respondents : No Appearance for R1 to R4

Mr.R.Nandhakumar for R5 to R8

ORDER

The only ground cited by the petitioners seeking to condone the delay of 2534 days to set aside the ex-parte decree dated 08.07.2002 is that, they were not aware of the suit proceedings.

2. It is seen that in the execution proceedings initiated in the year 2002, the first petitioner herein was arrived as 4th defendant and was also represented by a counsel. As such, during the pendency of the execution proceedings, the first petitioner herein was very much aware of the suit proceedings and an ex-parte decree was passed. As such, the reason adduced by the petitioners in their application to condone the delay is that, he came to be set ex-parte only when the delivery notice was ordered in the year 2009, is not correct. The trial Court had also relied upon this aspect and stated that since the petitioners herein have participated in the

execution proceedings in the year 2002 and therefore, cannot claim ignorance of the ex-parte decree and as such, had rejected the application. Even otherwise, the delay of 2534 days is inordinate in nature. The suit is one for specific performance. The decree came to be passed in the year 2002. At this stage, if any favourable orders are passed in the application filed under Section 5 of the Limitation Act, there would be serious prejudice caused to the respondents herein, who have the benefit of the decree and are unable to execute the same for the past more than 15 years. Since the reasons adduced by the petitioners to condone the inordinate delay cannot be termed a sufficient cause, I do not find any infirmity in the order of the trial Court in rejecting the petitioners' application.

3. Hence, the present Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

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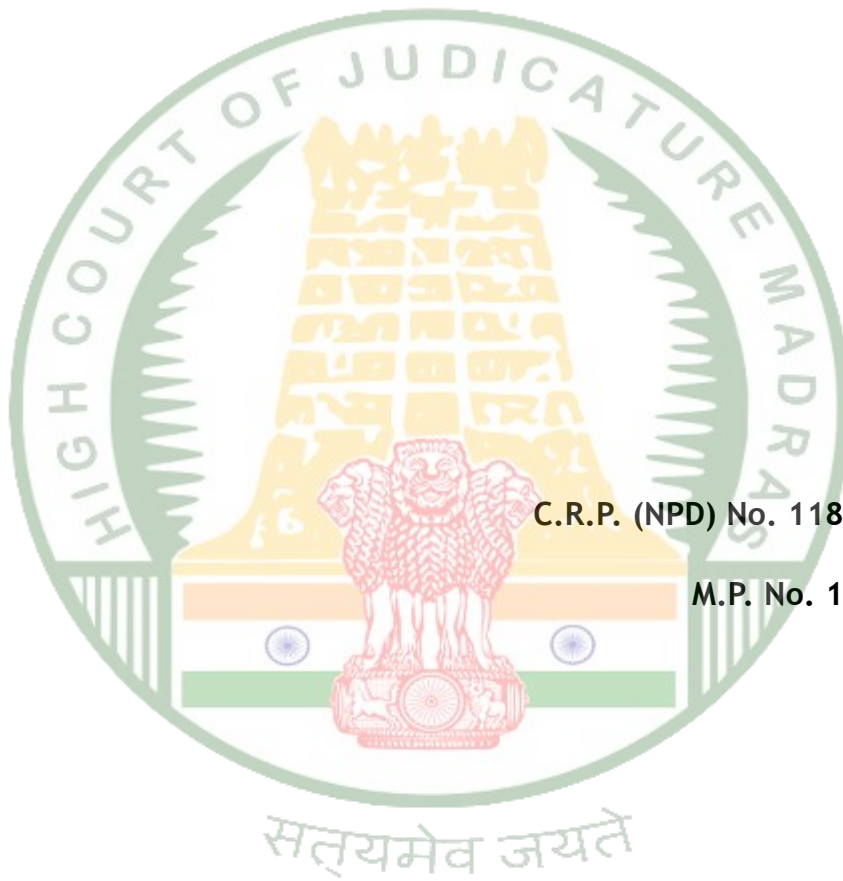
Index:Yes/No

Speaking order: Yes/No

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M.S.RAMESH.,J

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