

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2019

Coram

The Honourable Mrs.**Justice R.HEMALATHA**

C.R.P.No.1742 of 2012

and

M.P.No.1 2012

Vijayalakshmi

... Petitioner

Vs.

1.Vasantha

Rajeswari(died)

2.Anjal @ Anjala

3.Pasupathi

4.Kasthuri

5.Ranganathan

6.Sulochana

7.Sumathi

8.Venkatesan

... Respondents

This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 29.01.2011 made in I.A.No.627 of 2009 in O.S.No.29 of 2000 on the file of the learned District Munsif, Gudiyatham, Vellore.

For Petitioner : Mr.T.Dhanyakumar

For Respondents : Mr.N.Manoharan for R1

ORDER

The present civil revision petition has been filed against the orders dated 29.01.2011 passed in I.A.No.627 of 2009 in O.S.No.29 of 2000 by the learned District Munsif, Gudiyatham, Vellore District.

2. The civil revision petitioner is the 4th defendant in the suit in O.S.No.29 of 2000 on the file of the District Munsif Court, Gudiyatham, Vellore District. The first respondent/plaintiff filed the above suit for partition of the suit properties into 6 equal shares and to allot one share to him. The defendants, except third defendant, though received summons, did not file their written statements and ultimately they were set exparte. The 3rd defendant filed his written statement and after full contest, the suit was decreed in favour of the plaintiff. A preliminary decree for partition of the suit properties was passed in favour of the plaintiff by the learned District Munsif, Gudiyatham vide his decree and judgment dated 19.01.2006. Subsequently, the defendants 2,4,5,7,8 and 9 filed an application under Order IX Rule 13 Civil Procedure Code praying to set aside the exparte decree passed against them and along with the said application filed a petition in I.A.No.627 of 2009 under Section 5 of the Limitation Act praying to condone the delay of 1226 days in filing the application under Order IX Rule 13 Civil Procedure

Code. The respondents herein filed their counters and the learned District Munsif, Gudiyatham after analyzing the evidence on record, dismissed the application vide his fair and decretal order dated 29.01.2011. Aggrieved over the same, the present civil revision petition is filed.

3.Mr.T.Dhanyakumar, learned counsel appearing for the civil revision petitioner contended that since the property was purchased in the name of the third defendant by the other defendants, the third defendant cannot claim any share in the property and that he colluded with the plaintiff and a decree was passed in the suit in O.S.No.29 of 2000. It is also contended by him that there was a panchayat, in which the plaintiff and the defendants agreed for some settlement and the plaintiff also promised that he would withdraw the suit filed by him. According to the civil revision petitioners/defendants they did not file their written statements in the suit in view of the decision taken in the panchayat and have the exparte decree passed against them should be set aside.

4.Per contra, Mr.N.Manoharan, the learned counsel appearing for the first respondent/plaintiff would contend that the defendants though received summons, did not file their written statements and the learned District Munsif passed a preliminary decree for partition

after full contest by the third defendant in the suit in O.S.No.29 of 2000. He further contended that the present civil revision petitioners did not show sufficient cause to condone the delay of 1226 days in filing the application under Order IX Rule 13 Civil Procedure Code and therefore, the learned District Munsif, Gudiyatham is right in dismissing the petition in I.A.No.627 of 2009 filed by the civil revision petitioners.

5.It is seen from the records that the civil revision petitioners/defendants received suit summons in O.S.No.29 of 2000. However, they did not file any written statement and were set exparte. The 3rd defendant in O.S.No.29 of 2000 filed his written statement and after full contest, the suit was decreed on 19.01.2006. The contention of the learned counsel appearing for the civil revision petitioners is that the property which stands in the name of the third defendant was purchased by the other defendants and therefore the third defendant is not entitled to ask for any share in the suit properties. In any event, the petitioners have not shown sufficient cause in condoning the delay of 1226 days of delay in filing the application under Order IX Rule 13 of the Code of Civil Procedure. Moreover, the decree passed in O.S.No.29 of 2000 is based on merits. No doubt, the power to condone delay under Section 5 of the Limitation Act had been conferred in order to

enable the Court to do substantial justice to parties by disposing of matters on merits. However, in the instant case, the revision petitioners have not explained the delay in filing the petition under Order IX Rule 13 Civil Procedure Code. The learned District Munsif, Gudiyatham has analyzed the records in the proper perspective and has come to the conclusion that the decree passed against the present civil revision petitioners is not liable to be set aside. The reason assigned by the learned District Munsif, Gudiyatham is based on sound principles of law. Therefore, I do not find any reason to interfere with the findings recorded by the learned District Munsif, Gudiyatham.

6. In the result, the civil revision petition is dismissed. No costs. Consequently, connected M.P is closed.

सत्यमेव जयते

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Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

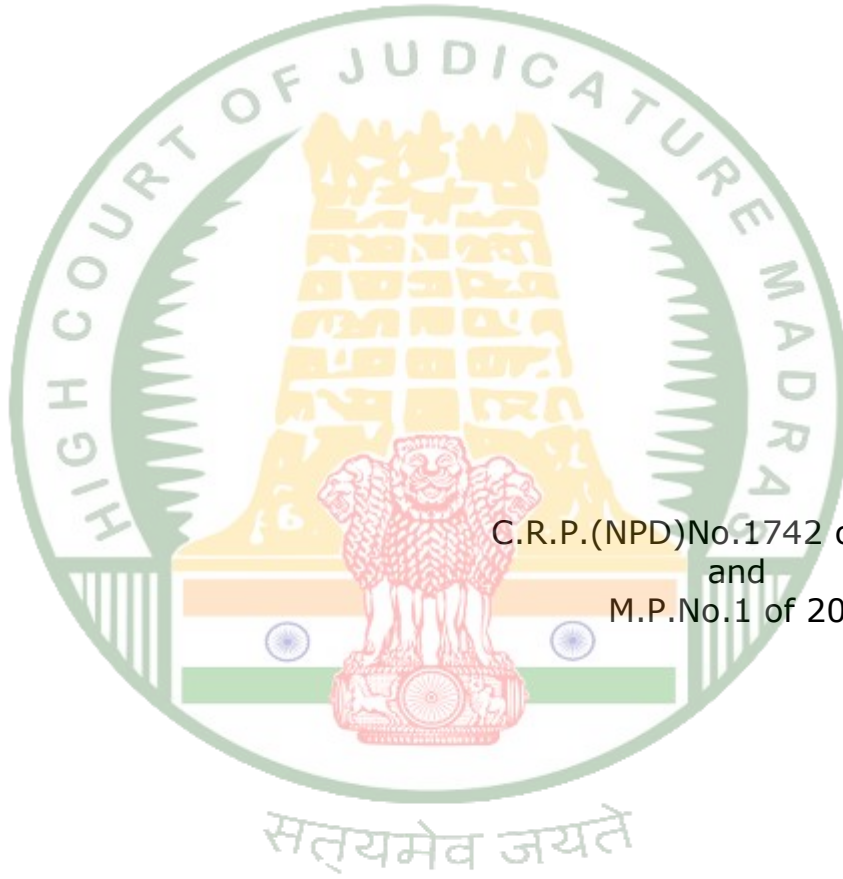
To

The District Munsif Court,
Gudiyatham,
Vellore District.

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R.HEMALATHA.J.,

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