

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2019

PRONOUNCED ON : 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(NPD) No.1295 of 2015
and M.P.No.1 of 2015

1.Murugan

2.Gowri

3.Nadiya

4.Adilakshmi

5.Siva (Minor)

rep.by mother and natural
guardian Gowri

.. Petitioners

vs

Sudakar

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 01.08.2014 made in I.A.No.211 of 2014 in O.S.No.115 of 2011 on the file of the District Munsif Sankarapuram.

For Petitioners : Mr.H.Kishore

For Respondent : Mr.A.Gokulakrishnan

ORDER

The Petitioners are aggrieved by the impugned fair and decretal order dated 01.8.2014 passed in I.A.No.211 of 2014 in O.S.No.115 of 2011 by the District Munsiff Court at Sankarapuram.

2. By the impugned order, the District Munsif has dismissed the above application filed under Section 5 of the Limitation Act filed by the petitioners seeking to condone the delay of 702 days in filing application to set aside ex parte decree dated 13.9.2011.

3. The petitioners are the defendants in the above suit filed by the respondent for partition of the suit schedule properties. The respondent claims to be the illegitimate son of the 1st petitioner through his mother Kasturi with whom the 1st petitioner had relationship.

4. Though suit summons were served on the petitioners, there was no representation on their behalf. The petitioners were therefore set ex parte and an ex parte preliminary decree came to be passed on 13.9.2011. Thereafter, a final decree application was filed. An advocate commission was appointed on 27.9.2013 to visit the property.

5. The petitioner filed I.A.No.211 of 2014 in O.S.No.115 of 2011 under Section 5 of the Limitation Act to condone the delay of 702 days in filing application to set aside ex parte decree dated 13.09.2011. The District Munsif Court has dismissed the application. Under these circumstances, the present Civil Revision Petition has been filed.

6. Heard the learned counsel for the petitioners and the respondent. I have perused the records.

7. It is the case of the petitioners that they had engaged a local advocate to appear on their behalf who failed to do so and therefore only when the advocate commissioner visited the property, they became aware of the ex parte decree passed by the court.

8. The affidavit filed by the petitioners in support of the above application though detailed on merits of the case nevertheless does it give any particular details of the local advocate allegedly engaged by the petitioner to take care of the case. Needless to state, the affidavit has not disclosed adequate reasons for condoning the delay.

9. Therefore, the order passed by the District Munsif cannot be found fault with. At the same time, the ex parte decree bears no discussion barring examination of the respondent to mark the documents.

10. In my view, the court should have passed a detailed order even though the petitioners were set ex parte as such decrees determine the rights of the parties in a suit for partition.

11. The claim of the 1st petitioner is that the respondent was not his son deserves to be probed as it goes to the root of the case. I therefore find sufficient reasons to condone the delay. At the same time, since the petitioners were negligent in not taking steps to appear and have filed an affidavit which is bereft of details, the present CRP can be allowed only on terms.

12. Therefore, to balance the interest of the parties and to meet the ends of justice, I am of the view that the order passed by the learned District Munsiff Court can be interfered to do justice on payment of costs.

13. Therefore, the petitioners are directed to pay a sum of Rs.30,000 to the credit of the above suit within a period of four weeks from date of receipt of this order as cost payable to the respondent.

14. The petitioners shall also file their written statement within such time. The respondent is at liberty to withdraw the aforesaid amount awarded as cost. The court shall frame issues and proceed with the trial and pass a preliminary decree followed by a final decree within a period of nine months of receipt of this order.

15. Accordingly, the present civil revision petition stands allowed together with consequential relief on cost. Consequently, connected Miscellaneous petition is closed.

03.07.2019

Index : Yes/No
Internet : Yes/No
Speaking : Non-speaking order
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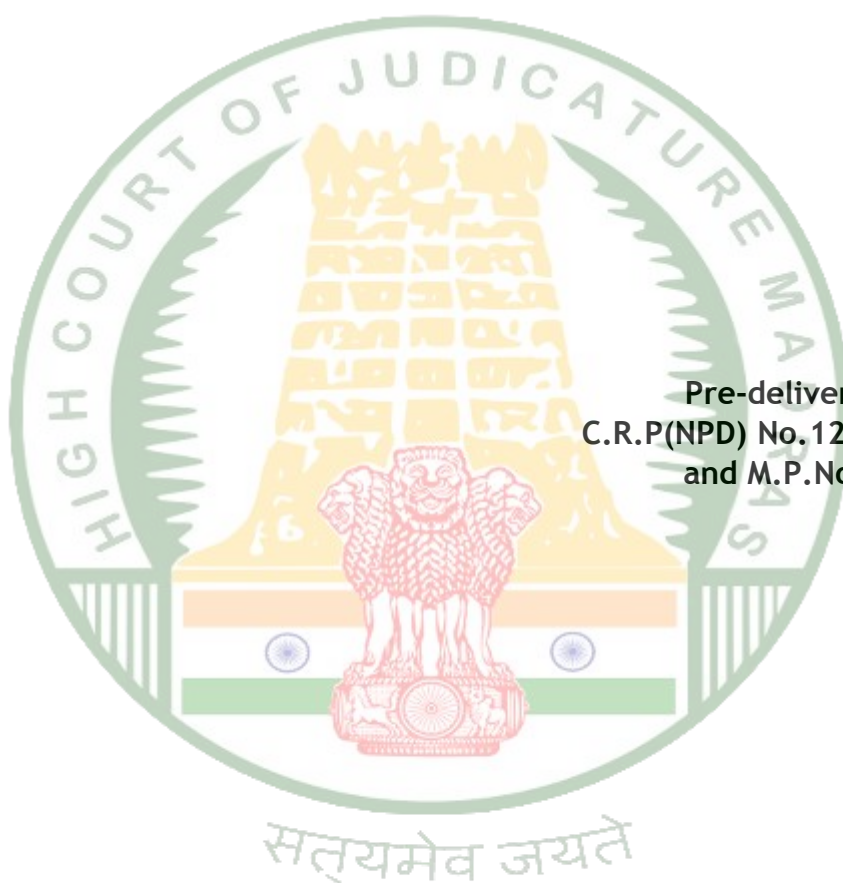
To
District Munsif Court,
Sankarapuram.



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C.SARAVANAN,J.

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Pre-delivery order in
C.R.P(NPD) No.1295 of 2015
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