

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.08.2019

Coram

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

C.R.P.(NPD)No.2079 of 2013

Karuppannan

... Petitioner

Vs.

1.Rajeswari
2.Kavitha
3.Poorselvi
4.Sudha

... Respondents

This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 31.10.2011 passed in I.A.No.127 of 2010 in unnumbered A.S.No. of 2010 by the learned Principal District Judge, Salem.

For Petitioner : M/s.R.Sripriya for
Mr.V.Raghavachari

For Respondents : Mr.C.Gurulingam for R1 and R2

ORDER

The present civil revision petition has been filed against the orders dated 31.10.2011 passed in I.A.No.127 of 2010 in unnumbered A.S.No. of 2010 by the learned Principal District Judge, Salem.

2.The petitioner is the appellant in unnumbered A.S.No. of 2010 on the file of the Principal District Judge, Salem. He filed the appeal against the decree and judgment dated 01.04.2008 passed in O.S.No.8 of 2004 by the learned Subordinate Judge, Attur and along with appeal he filed an application in I.A.No.127 of 2010 under Section 5 of the Limitation Act praying to condone the delay of 636 days in filing the appeal. The learned Principal District Judge, Salem, after analysing the evidence on record, dismissed the application vide his fair and decreetal orders dated 31.10.2011. Aggrieved over the same, the present civil revision petition is filed.

3.Mrs.R.Sripriya, the learned counsel appearing for the civil revision petitioner contended that the revision petitioner was hospitalized continuously for a period of 1-1/2 years and though Ex.P1 medical certificate was also produced to that effect, the learned Principal District Judge, Salem dismissed the application filed by the revision petitioner. Therefore, she contended that an opportunity should be given to the revision petitioner to file an appeal against the decree and judgment dated 31.10.2011 passed in O.S.No.8 of 2004.

4.Per contra, Mr.C.Gurulingam, learned counsel appearing for the respondents 1 and 2 contended that the revision petitioner is residing very nearer to the house of his counsel and therefore he could have given instructions to his counsel for filing the appeal in time before the Principal District Court, Salem and that since he did not show sufficient cause for condoning the delay of 636 days in filing the appeal, the orders passed by the learned Principal District Judge, Salem is perfectly in order.

5.It is seen from the records that the suit in O.S.No.8 of 2004 was filed for partition of the suit properties into 10 equal shares and to allot 4 such shares to the plaintiffs. The suit was decreed after full contest. Subsequently, the revision petitioner filed an appeal against the preliminary decree passed in O.S.No.8 of 2004 before the Principal District Court, Salem, along with a petition under Section 5 of the Limitation Act praying to condone the delay of 636 days in filing the appeal. Though, it is specifically contended by the revision petitioner that he took treatment continuously for a period of 1 - 1/2 years in a hospital, the learned Principal District Judge, Salem dismissed the application on the ground that the revision petitioner did not mention the name of the Hospital where he took treatment. Ex.P1, Medical Certificate dated 06.08.2010 shows that

the petitioner was bedridden continuously for a period of 1-1/2 years. This aspect has not been considered by the Principal District Judge, Salem. It is also pertinent to point out that every day's delay must be explained does not mean that pedantic approach should be made. The doctrine must be applied in a pragmatic manner and when the civil revision petitioner states that he was hospitalized continuously for a period of 1-1/2 years and the Medical Certificate Ex-P1 also produced to that effect shows that the revision petitioner could not file the appeal in time, the Principal District Judge, Salem, should have allowed the application. Therefore, the civil revision petition is liable to be allowed.

6.In the result, the civil revision petition is allowed. No costs. Since the appeal is of the year,2010, the learned Principal District Judge, Salem is directed to number the appeal and dispose of the same within a period of two months from the date of receipt of a copy of this order.

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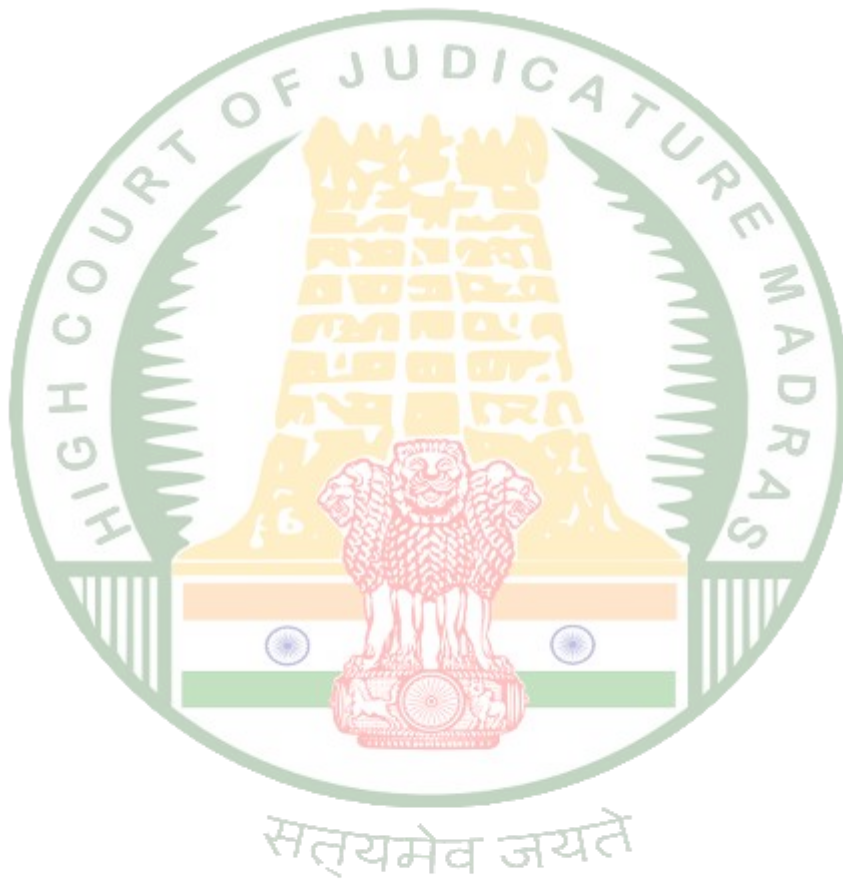
Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

To

The Principal District Judge,
Salem.

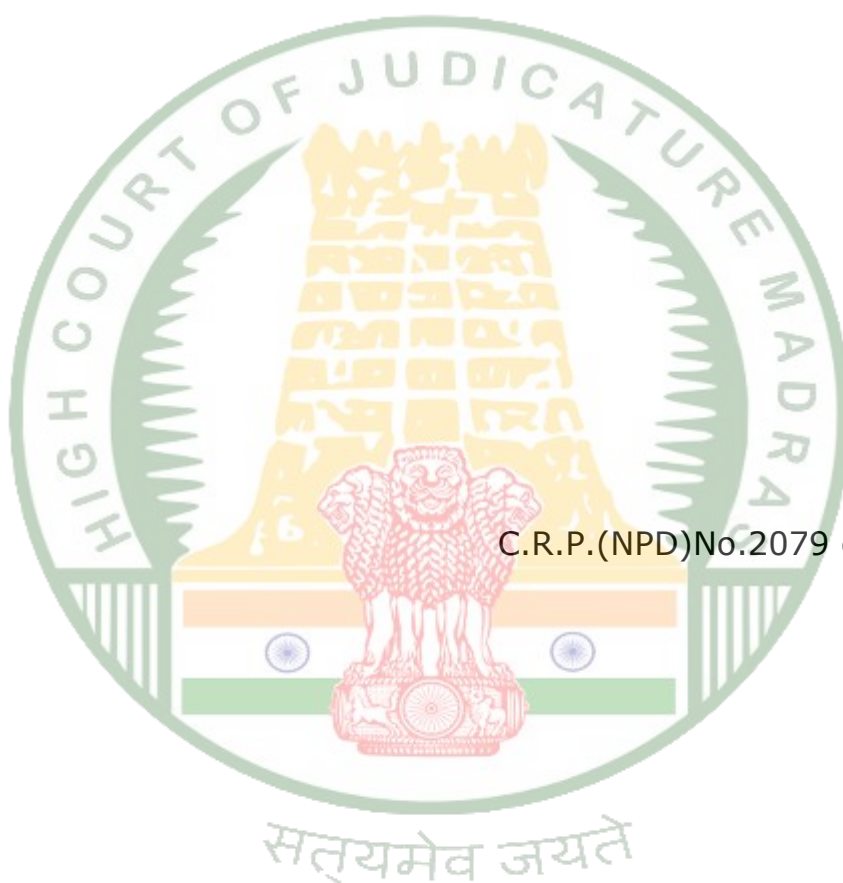


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