

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.895 of 2015

K.Marimuthu Prabakaran ... Petitioner

vs.

1.K.Sathiyamoorthy

2.K.Karunakaran

3.K.Sudhakaran

4.T.S.M.Panneer Selvam ... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decretal order dated 08.08.2014 in I.A.No.153 of 2014 in O.S.No.248 of 2010 on the file of Additional Sub Court, Thiruvannamalai.

For Petitioner : Mr.G.Rajan

For Respondents : No appearance for R3 & R4

: R1 died

: R2 Unclaimed

ORDER

The present Civil Revision Petition has been filed to set aside the fair and decretal order dated 08.08.2014 passed by the

Additional Subordinate Court, Thiruvannamalai in I.A.No.153 of 2014 in O.S.No.248 of 2010.

2.By the impugned order the court has dismissed I.A.No.153 of 2014 in O.S.No.248 of 2010 filed by the petitioner to condone the delay of 183 days in filing application to set aside the decree dated 01.02.2013 in the said suit.

3.The petitioner was the plaintiff in O.S.No.248 of 2010 which was filed for partitioning the suit schedule properties. In the said suit, the defendants filed their written statement. However, the suit was dismissed for default on 01.02.2013.

4.Under these circumstances, the petitioner filed I.A.No.153 of 2014 to condone the delay of 183 days in filing application to set aside the decree dated on 01.02.2013 under Section 5 of Limitation Act.

5.The court has dismissed the application on 08.08.2014, on the ground that the petitioner has not given sufficient explanation

for condoning the delay he has not produced any evidence to show that the petitioner.

6.Despite service of notices on the respondents, there is no representation for the respondents. It is noticed that the 1st respondent died during the pendency of the present Civil Revision Petition. The 2nd respondent has remained unserved. Notice on the other respondents have been served but there is no representation for them. Hence this case is taken up for hearing without their presence.

7.There is no point in keeping this present Civil Revision Petition pending. I am inclined to set aside the impugned order and allow the present Civil Revision Petition on terms as there is a mere delay of 183 days.

8.The petitioner is therefore directed to deposit a sum of Rs.7,500/- to the credit of the above suit within a period of four weeks from the date of receipt of a copy of this order as cost. The petitioner shall take steps to implead the legal representatives of

the 1st respondent in the said suit within the period of four weeks from the date of receipt of a copy of this order.

9.On such deposit the learned Subordinate Judge, Tiruvannamalai is directed to dispose the suit within a period of six months from the date of receipt of a copy of this order.

10.The other respondents and legal representatives of the 1st respondent are entitled to receive the cost by filing appropriate application for payment out.

11.The Civil Revision Petition stands allowed on terms with the above observations.

23.07.2019

Index:Yes/No
Internet:Yes/No
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To

1.The Additional Subordinate Court,
Thiruvannamalai.

2.The Subordinate Court,
Thiruvannamalai.

3.The Section Officer, V.R.Section,
High Court,
Madras.



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C.SARAVANAN.J.,

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