

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.3076 of 2013

Sugumaran .. Revision Petitioner/1st Defendant

Vs.

Sumathi .. Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 21.12.2012 passed in I.A.No.134 of 2012 in O.S.No.71 of 2010 on the file of the Sub-Court, Cheyyar.

For Petitioner : Mr.P. Mani

For Respondent : Mr.K.G. Senthilkumar

ORDER

This Revision Petition has been filed against the order of the trial Court dismissing the application filed to set aside the ex-parte order passed against the Revision Petitioner/First Defendant.

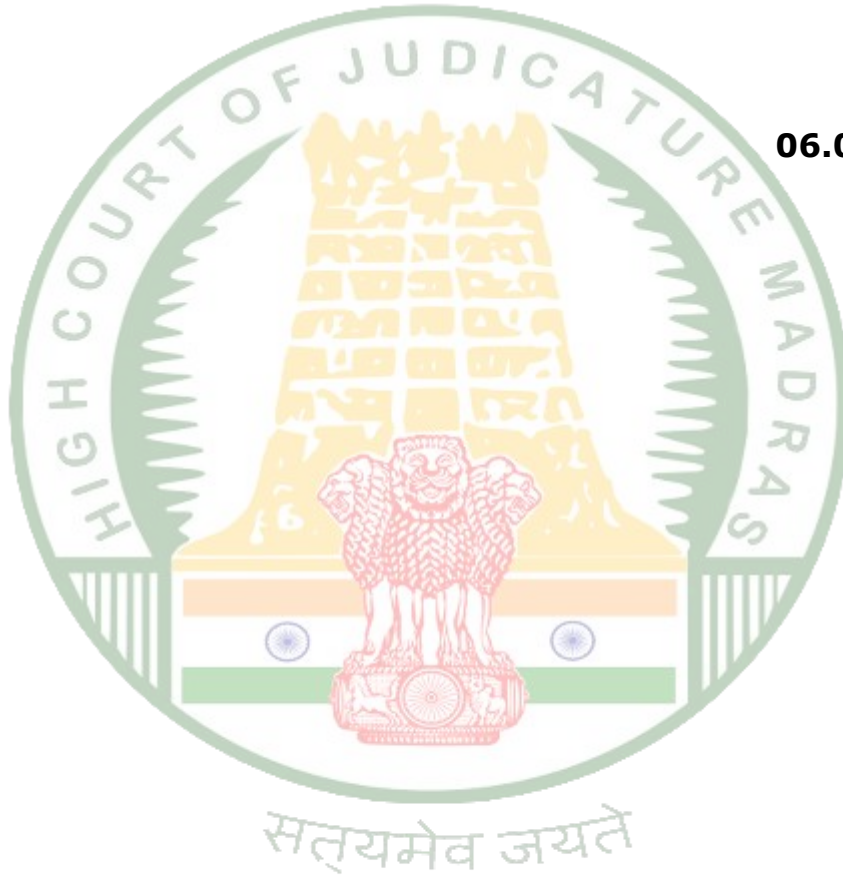
2. The suit has been laid for partition as against 1st and 2nd Defendants. It is undisputed fact that the ex-parte decree has been passed on 7.12.2010. Thereafter, at the instance of the Second Defendant, ex-parte decree has been set aside. Now at this stage, the present Revision Petitioner, First Defendant has filed this revision petition to set aside the ex-parte order. Though originally, ex-parte decree has been passed against the First and Second Defendants and subsequently the above decree has been set aside. Since the suit itself is filed for partition, the decree cannot be severable. Once decree is set aside in entirety, this Court is of the view that there is no need for the Revision Petitioner to file another petition to set aside the exparte decree. Therefore, the approach of the trial Court that Section 5 of the Limitation Act will apply, cannot be countenanced. It is also informed that while filing an application to set aside the exparte order, written statement has also filed by the Revision Petitioner. In view of the same, the order of the trial Court passed against the First Defendant dismissing the application to set aside the exparte order is hereby set aside.

3. The trial Court is directed to take written statement to file,

frame necessary issues and dispose of the suit within six (6) months from the date of receipt of copy of this Order.

4. In view of the above, the Civil Revision Petition is ordered. No costs.

ggs



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N.SATHISH KUMAR, J.

ggs



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