

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAISWAMY

C.R.P.No.3470 of 2013
and M.P.No.1 of 2013

Alamelu Ammal

... Petitioner/Plaintiff

Vs.

1.Selvakumar
2.Ammami Ammal
3.Tamil Arasan
4.Kalaivani
5.Kesavamurthy
6.A.Devaraj
7.Alamelu Ammal
8.Saritha
9.Lalitha

... Respondents / Defendants 2 to 7/
LRs of the 1st Defendant.

Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 25.06.2013 passed in I.A.No.700 of 2011 in O.S.No.286 of 2004 by the Additional District Munsif, Tiruvannamalai.

For Petitioner : Mrs.G.Sumitra

For Respondents : Mr.S.Ambigapathi

सत्यमेव जयते

O R D E R

Challenging the fair and final order passed in I.A.No.700 of 2011 in O.S.No.286 of 2004 on the file of the Additional District Munsif, Tiruvannamalai, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.286 of 2004 for partition and for other reliefs. The defendants filed their written statement and were contesting the suit. While so, when

the suit was posted for trial for the evidence of D.Ws, the defendants remained absent, hence, an exparte preliminary decree was passed on 11.08.2009. Thereafter, the defendants filed an application in I.A.No.700 of 2011 to condone the delay of 256 days in filing the petition to set aside the exparte preliminary decree. In the affidavit filed in support of the petition, the defendants have stated that the 1st defendant, while travelling in a cart, fell down and sustained severe knee fracture in June 2009 and because of poor financial status, he could not take treatment immediately and subsequently, he had borrowed money from his relatives and went to Nagariputhur for taking native treatment for four months. Since he was taking care of the Court proceedings, he could not ascertain the Court proceedings from his counsel, hence, an exparte preliminary decree was passed on 11.08.2009. In these circumstances, the defendants filed an application to condone the delay of 256 days in filing a petition to set aside the exparte preliminary decree.

3.As already stated, the plaintiff has filed the suit for partition. The 1st defendant has stated that he was taking care of the Court proceedings and that he sustained fracture and was taking treatment for four months. The plaintiff filed her counter, however, could not establish that the averments stated in the affidavit filed in support of the petition are false. In these circumstances, the trial Court, in the interest of justice, condoned the delay of 256 days on payment of costs of Rs.500/-. The reasoning given by the trial Court is just and proper. I do not find any ground to interfere with the order passed by the trial Court. The Civil Revision Petition is dismissed.

4.Since the suit is pending from the year 2004, I direct the Additional District Munsif, Tiruvannamalai to dispose of the suit in O.S.No.286 of 2004, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

va

To

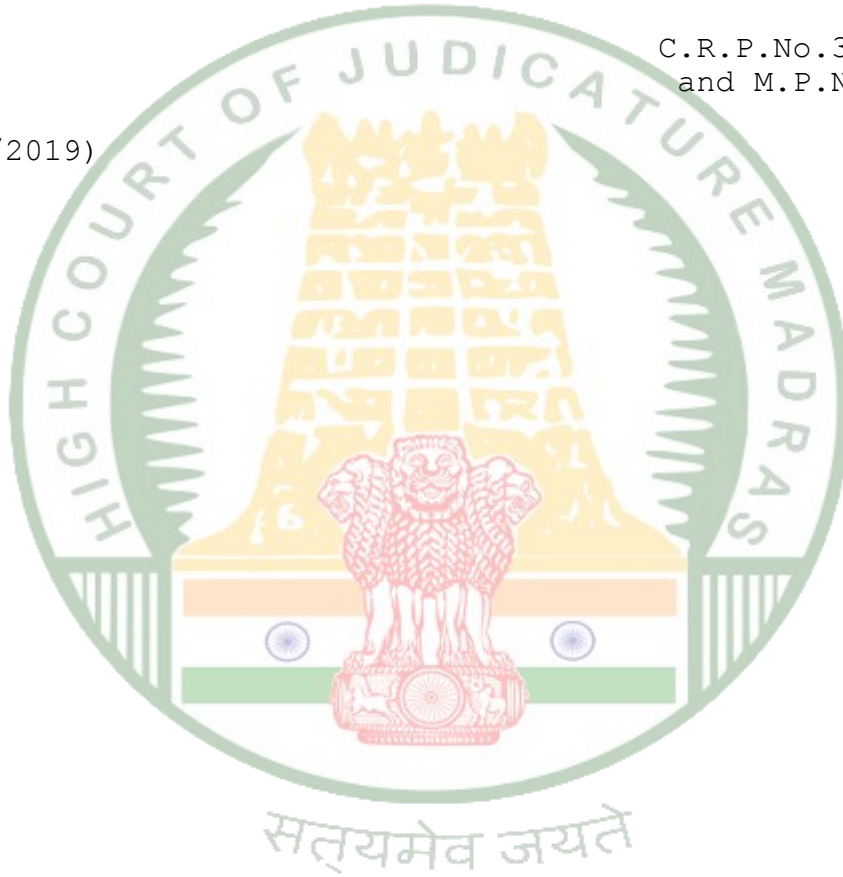
1.The Additional District Munsif,
Tiruvannamalai.

+1 cc to M/s.G.Sumitra, Advocate, S.R.No.84284

+1 cc to M/s.S.Ambigapathi, Advocate, S.R.No.84454

SR(CO)
SSM(09/10/2019)

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