

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.3811 of 2013
and M.P.No. 1 of 2013

1. Chandra Ammal
2. Krishnamurthy

.... Petitioners

Vs.

1. Kuppusamy
2. Jayaram
3. Padma
4. Vijaya
5. Sasikala
6. Adhilakshmi
7. Latha
8. Devan
9. Kanthammal
10. Duraibabu
11. Sulochana
12. Muniammal
13. Vasantha
14. Narayanasamy
15. Venugopal
16. Jayalakshmi
17. Chandru
18. Balu @ Loganathan
19. Salsa
20. Kanthammal
21. Rajalakshmi
22. Karpagavalli
23. Rajendran
24. Joseph



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25.Manjula
 26.Thenmozhi
 27.Najmabanu
 28.Saraswathi
 29.Manimegala Ramasamy
 30.Chitra Sridhan
 31.Arasappan
 32.Mariapushpam

... Respondents

(R2 to R32 are not necessary parties in this C.R.P, hence, given up).

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 14.06.2013 made in I.A.No.1329 of 2006 in A.S.SR.No.2742 of 2006 on the file of the Principal District Judge, Chengalpattu.

For Petitioners : M/s.R.Radhapandian

For 1st Respondent : Mr.S.R.Sundar
 (R2 to R32 given up)

ORDER

The instant Civil Revision Petition has been filed against the fair and decreetal order dated 14.06.2013 made in I.A.No.1329 of 2006 in A.S.SR.No.2742 of 2006 passed by the Principal District Judge, Chengalpattu, dismissing the application filed to condone the delay of 2507 days in filing the appeal.

Brief facts leading in the instant Revision are as follows:-

2. The second petitioner is the 28th appellant in the appeal and he was arrayed as 28th defendant in the suit and the first petitioner is the 27th defendant, who is his wife. According to him, his wife's name was mentioned as Chandrammal instead of Sundarammal. According to them, suit summons were not served and address was also not correct. The petitioners have purchased an extent of 8,000 sq.ft. of land in suit item No.1 under two different sale deeds registered on the same day from defendant Nos.2 to 7 in the suit. Now only, the petitioners came to know about the decree. Soon after the knowledge of the *ex parte* decree, they filed a petition to set aside the *ex parte* decree on the file of the District Munsif, Chengalpattu. However, the Court kept the application pending for clarification as the preliminary decree was passed by the Subordinate Judge. In the meanwhile, he was advised to prefer an appeal. From the date of knowledge, there is no delay in preferring the appeal. By way of abundant caution, he filed an application to condone the delay of 2507 days in filing the appeal.

3. The above application was opposed by the respondents on the ground that the petitioners have knowledge about the proceedings in O.S.No.279 of 1995, and there were 33 defendants in O.S.No.279 of 1995 including the petitioners and they purchased the property from defendant Nos.2 to 7. It is further stated that though the petitioners have filed an application to set aside the *ex parte* decree, they have not prosecuted the same diligently. The petitioners have not explained the enormous delay of 2507 days in filing the appeal with any acceptable reason. The first appellate Court dismissed the application holding that there was no sufficient cause, against which, the present revision has been filed.

4. The learned counsel appearing for the revision petitioners would contend that they have knowledge of the preliminary decree very recently. From the date of knowledge, there is no delay in preferring the appeal. By way of abundant caution, they filed an application to condone the delay of 2507 days in filing the appeal. According to him, the application filed to set aside the *ex parte* decree was kept pending in the

Court and thereafter, they filed an appeal. Since they are the purchasers of the suit property from one of the co-owners, their right has been agitated in the appeal. Hence, he prayed to allow the present revision.

5. The learned counsel appearing for the revision petitioners has also placed reliance on the judgment of the Full Bench of Delhi High Court in the case of ***Tej Pratap Singh and others Vs. Union of India and others*** reported in **2018 (6) CTC 353**.

6. The learned counsel appearing for the respondent would contend that the contention of the petitioners that they have no knowledge of the preliminary decree is false. In fact, they are the defendants in the suit and they have filed an application to set aside the *ex parte* decree, which was dismissed. Thereafter, they filed an appeal with huge delay and final decree was already passed. If at all, they want to establish their rights, they can file a partition suit against their vendors, against whom the property was already allotted. Hence, he prayed for dismissal of this revision.

7. Heard the learned counsel appearing on both sides and perused the materials placed before this Court.

8. The suit originally, has been filed for partition of the suit property. In the suit, the second petitioner was arrayed as 28th defendant in the suit and the first petitioner is the 27th defendant, who is his wife. This fact is not disputed. Though it is the contention of the revision petitioner that the suit summons were not served properly, it is to be noted that they already filed an application to set aside the *ex parte* decree in O.S.No.279 of 1995.

9. The factum of filing the above application clearly indicates that the contention that they have no knowledge of the preliminary decree cannot be countenanced. It is further to be noted that they filed the appeal challenging the preliminary decree with a delay of 2507 days. The averment as set out in the affidavit to condone the delay does not show the valid reasons much less sufficient cause. It is further to be noted that when the petitioners have filed the application

to set aside the *ex parte* decree under Order IX Rule 13 C.P.C. which is also dismissed due to non-prosecution, now, they cannot contend that the suit summons were not served and they have no knowledge of the preliminary decree. Such a contention has been made only for the purpose of filing an appeal. It is further to be noted that now the final order was already passed and the same is not disputed. The petitioners are only the purchasers from defendant Nos.2 to 7. Their right will arise only on the co-owners to get their share allotted. Their vendors are defendant Nos.2 to 7 in the final decree proceedings. Instead of working out such a remedy as per law for filing a partition suit against the vendors, the petitioners cannot file an appeal with huge delay without any reason.

10. No doubt, in the judgment of *Tej Pratap Singh and others Vs. Union of India and others* reported in **2018 (6) CTC 353**, the Delhi High Court has held as follows:-

“Limitation Act, 1963 (36 of 1963), Section 5 - Sufficient Cause - Condonation of delay - condonation of delay is not vested right to be granted in all Appeals seeking enhancement of Compensation - Social and economic conditions of Appellant, including his educational background and other limitations are

most important determining factors to be considered for condoning delay, so as to not deny justice and correct disparity - Negligent fence sitters, who had economic resources to enforce their rights, need not be indulged - Enhanced Compensation awarded in other cases is relevant factor in considering delay condonation, but would not be sole or dominant consideration - When delay is substantial and long, social and economic condition of Appellant is primary and dominant consideration.

Absolutely, there is no dispute on the said judgment. But, to exercise the discretion to condone the huge delay, there must be a reasonable and plausible explanation. In the absence of any sufficient cause, discretion cannot be exercised automatically as a matter of right. The Court has to see the conduct of the parties and the delay has to *bona fide* and reasonable. When the persons came to the Court suppressing the certain facts and claiming that they have no knowledge of the preliminary decree and filed an application with huge delay, it cannot be said that they came with *bona fide* reasons.

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11. I do not find any irregularity and infirmity in the order passed by Principal District Judge, Chengalpattu, in I.A.No.1329 of 2006 in A.S.SR.No.2742 of 2006, dated 14.06.2013 dismissing the application.

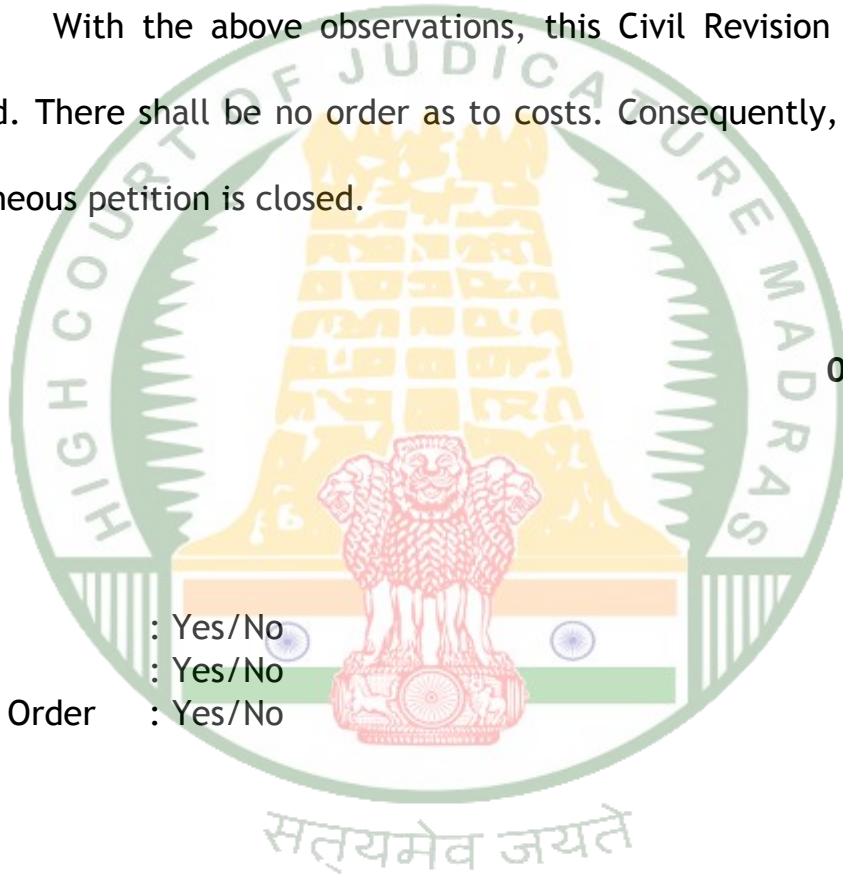
It is for the revision petitioners to work out their remedy against their vendors by filing an appropriate suit for allotment of their shares purchased from them.

With the above observations, this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.03.2019

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Index : Yes/No
Internet : Yes/No
Speaking Order : Yes/No



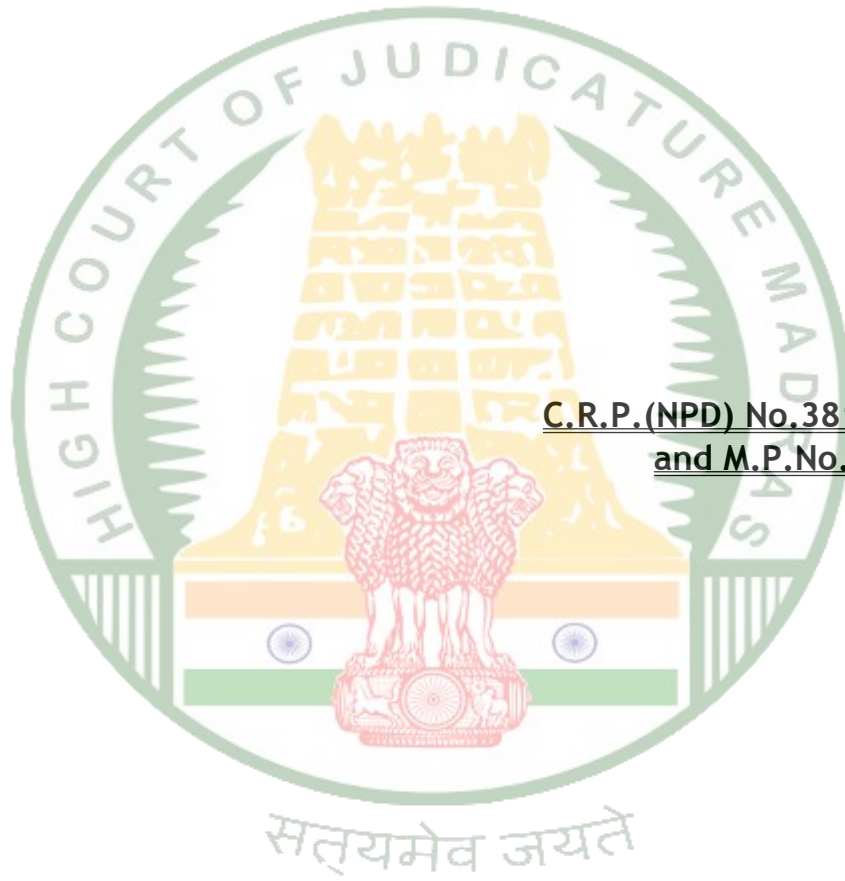
To

The Principal District Judge,
Chengalpattu.

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N. SATHISH KUMAR, J.

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