

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD No.4147 of 2013

Vijayasamundeeswari ... petitioners

Vs.

1. Murugesu Mudaliar

2. G.M.Babu

3. G.M.Sivagurunathan

... Respondents

Prayer Civil Revision petition filed under Article 227 of the Constitution of India against the order dated 06.09.2013 made in I.A.No.51 of 2012 in O.S.No.26 of 2011 by the Subordinate Judge, Sathyamangalam.

For Revision Petitioners : Mr.Roshan Atiq

For respondent No.2 & 3 : Mr.S.P.Harikrishnan

For 1st respondent : No appearance

ORDER

This revision petition has been filed against the order of the trial court, dismissing the application, filed to condone the delay of 229 days in filing a petition to restore the suit, which was dismissed for default on 19.01.2012.

2. The revision petitioner is the plaintiff in the original suit and she filed the suit against her father and brothers claiming a share in the ancestral property. When the suit was posted for hearing on 19.01.2012, the plaintiff was not present and hence the suit was dismissed for default and there was a delay of 229 days in filing a restoration petition. The reason for such delay stated by the petitioner is that she was afflicted with jaundice and had been bedridden from 10.01.2012 and taking continuous treatment. The application was opposed by the respondents. The trial court dismissed the condone delay petition on the ground that the reason for the delay has not been established and no document was filed to prove the alleged illness. Against which, this revision petition has been filed.

3. The learned counsel for revision petitioner would contend that the petitioner is coming from village background and it is difficult to her to prove the illness by way of documentary evidence. He would further submit that the substantial rights of the parties should not be shut and she should not be non suited for some technicalities.

4. The learned counsel for the respondents would contend that the delay has not been properly explained and the trial court rightly rejected the application and hence prayed for dismissal of the revision petition.

5. I have perused the order of the trial court. Admittedly, the suit has been filed claiming partition in respect of the joint family properties. The suit has been laid by the petitioner against her father and brothers. It is the contention of the revision petitioner that the suit has been dismissed due to her non appearance before the court and at that time, she was bedridden and taking continuous treatment for jaundice. Subsequently, she came to know about the dismissal of the suit and there occurred a delay of 229 days in filing a restoration

petition. Ofcourse, no documentary evidence was adduced by the petitioner. The trial court dismissed the application mainly on the ground that the petitioner has not filed any medical certificate. However, the trial court has not considered the entire evidence of PW1, who has clearly stated about the nature of the treatment and that she was taking continuous treatment. Such being the position, expecting a woman from village background to prove the treatment by way of documentary evidence is not possible. The Limitation Act is not meant to destroy the rights of the parties. Therefore, I am of the view that when the evidence of PW1 clearly spoken about the reasons for such delay and no contra evidence was adduced by other side, the trial court ought to have given importance to the evidence of the petitioner and extended liberal approach to condone the delay. Accordingly the order of the trial court is set aside.

6 In the result,

(i) The Civil Revision petition is allowed. No costs and the order of the trial court is set aside.

(ii) The trial court is directed to dispose the suit within a period of 8 months from the date of receipt of a copy of this order.

24.04.2019

Index : yes/no
Internet : yes/no
Speaking order/non-speaking order
mst

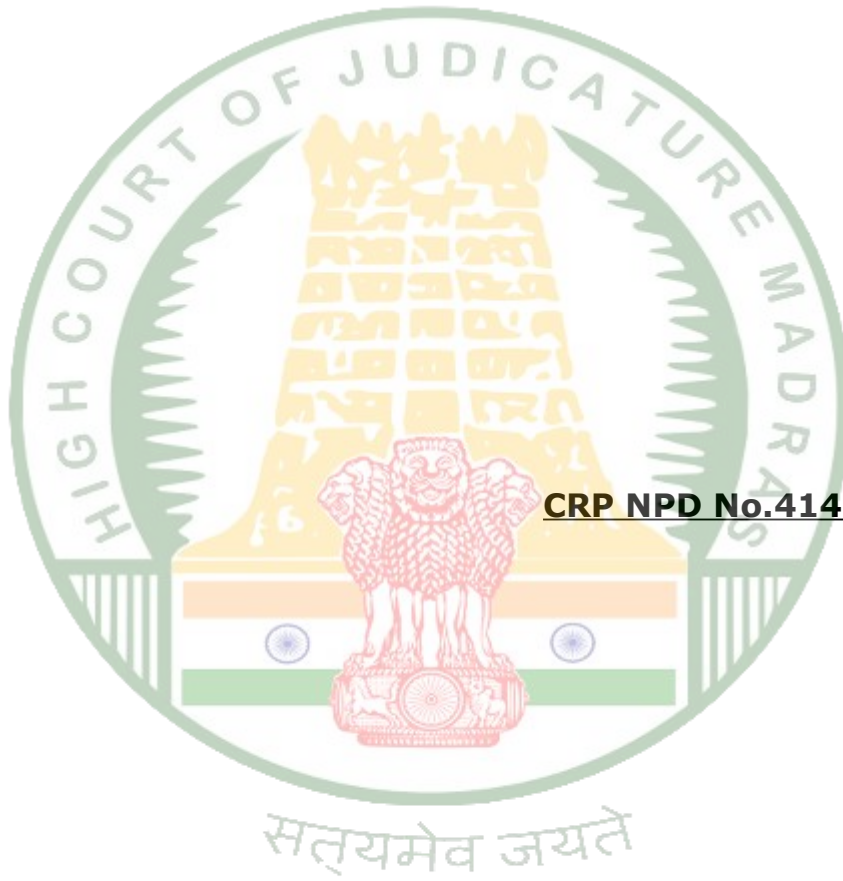
To
The Subordinate Judge,
Sathyamangalam.



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N.SATHISH KUMAR. J.,

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