

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(NPD) No.1082 of 2019

S.Muruganandham

... Petitioner

Vs.

1.S.Karthikeyan

2.K.Saroja

... Respondents

Prayer: Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 30.11.2018 in I.A.No.208 of 2017 in O.S.No.166 of 2010 on the file of the Principal District Munsif, Erode.

For Petitioner

: Mr.K.J.Parthasarathy

ORDER

This revision petition has been filed against the fair and decretal order made in I.A.No.208 of 2017 in O.S.No.166 of 2010 dated 30.11.2018 on the file of the Principal District Munsif, Erode.

2.Though notice was ordered, the service could not be effected.

Therefore, at the request of the learned counsel for the petitioner, by filing a separate petition, Court permitted the substituted service.

Accordingly, paper publication was effected, pursuant to which, the names and full address of the respondents have been shown in the cause list. Despite the same, when the matter is taken up for hearing, today no one is appearing for the respondents.

3.Heard Mr.K.J.Parthasarathy, learned counsel appearing for the revision petitioner.

4.The revision petitioner is the plaintiff before the Court below, who filed the partition against the respondents. The said suit was dismissed for default and in order to restore the same, an application was filed, since there has been a delay of 274 days in filing the said petition to restore the said application, under Section 5 of the Limitation Act, to condone the said delay of 274 days, an application was filed i.e., the present application in question (I.A.No.208 of 2017). However, the said application since has been rejected by the Court below through the impugned order, felt aggrieved over the same, the present revision petition has been filed.

5.The learned counsel appearing for the revision petitioner would submit that, plausible reason has been given by the revision petitioner in the affidavit filed in support of the petition to condone the said delay of 274 days, however, the same has not been properly considered by the Court below. He would also submit that, if this petition is not entertained and the suit is not restored, the valuable right of the party, i.e., the revision petitioner's family property for which the suit was filed, would get defeated. Therefore, in order to get justice, it become necessitated that this application under Section 5 of the Limitation Act has to be entertained.

6.I find force in the said contention made by the learned counsel appearing for the revision petitioner, as the substantive right of the parties over the properties in question is involved in this matter, without giving an opportunity for the litigant to agitate that issue in the manner known to law, at the threshold, the right on property cannot be taken away or abrogated. This view has been expressed in number of cases by the Hon'ble Apex Court and taking clue from that cases and applying the said principle in the present facts and circumstances, this Court is inclined to entertain this revision.

7.Moreover, the respondents, despite notice, have not appeared before this Court to put forth their case, which shows their scant interest in pursuing the matter.

8.For all these reasons, the order passed by the Court below is liable to be interfered with and accordingly, the same is set aside.

9.In the result, this Civil Revision Petition is allowed. There shall be no order as to costs.

12.11.2019

Index : Yes/No
Speaking Order : Yes/No

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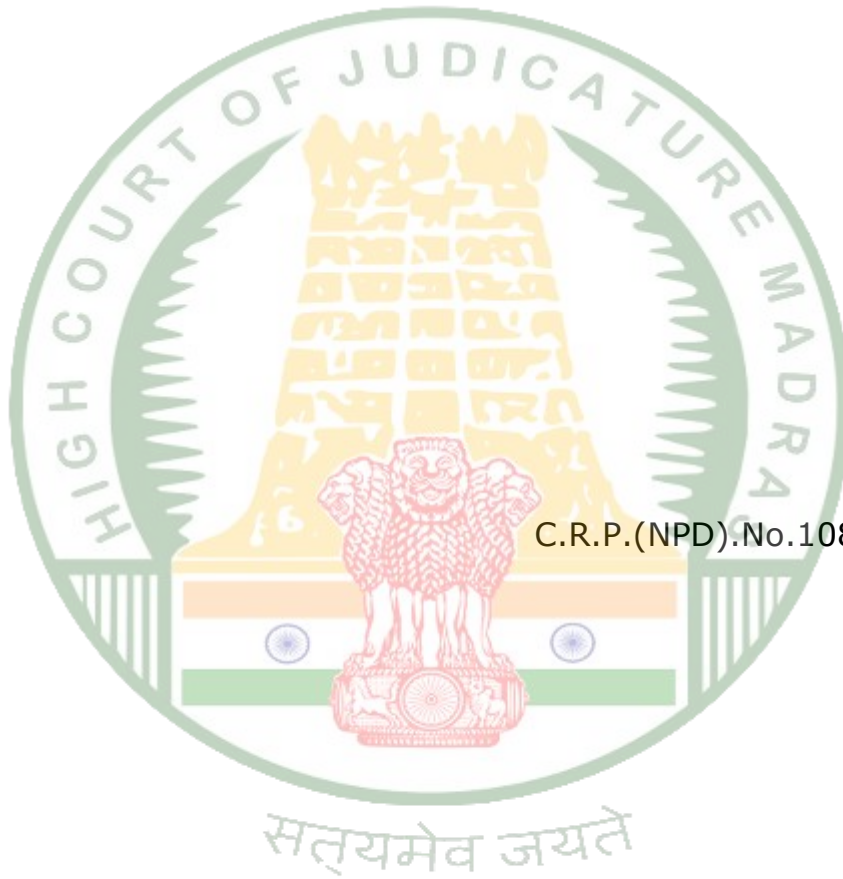
To

The Principal District Munsif,
Erode.

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R.SURESH KUMAR, J.

Sgl



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