

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(NPD).No.1119 of 2014

1.P.Gandhimathi
2.P.Pugalendi
3.P.Punitha
4.M.Ramachandran
5.M.Asaithambi

... Petitioners

vs.

1.B.Vasantha Kokilam
2.R.Jothi
3.M.Hariharan

... Respondents

PRAYER: Civil Revision petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 12.07.2013 in C.M.P.No.1425 of 2012 in A.S.Sr.No.38856 of 2012 passed by the Principal Judge, City Civil Court, Chennai.

For Petitioners : No appearance

For Respondents : Mr.C.K.M.Appaji

ORDER

The petitioner has filed the present Civil Revision Petition against the order dated 12.07.2013 made in C.M.P.No.1425 of 2012 in A.S.Sr.No.38856 of 2012 on the file of the Principal Judge, City Civil Court, Chennai.

2. There is no representation on behalf of the petitioners.

3. Heard the learned counsel for the respondents.

4. The petitioners are the defendant Nos.2, 3, 4, 5 and 6. The suit was filed by the first respondent seeking to partition in the Suit Schedule Property. After contest, the suit was decreed on 29.10.2013 by the Third Assistant City Civil Court, Chennai.

5. Aggrieved by the same, the petitioners herein filed an appeal with delay of 188 days. The said application to condone delay was filed in C.M.P.No.1425 of 2012. The affidavit filed in respect of the above application was filed by one Pugalendi who is the second petitioner herein and the third defendant in the above suit. The only reason given in the above application for condoning the delay as under:

3. I submit that since I was out of station and hence I could not contact my counsel to sign in the Vakalat and in the grounds of appeal.

4. I submit that the delay of one day in filing the appeal is neither willful nor wanton but for the reason stated above. I will be seriously prejudiced if this condone delay petition is not allowed by this Honourable Court whereas no serious prejudice would be caused to the Respondent/Respondent in allowing the petition.

The said application was contested by the first respondent/plaintiff.

6. By the impugned order, the Court has dismissed the application for condoning the delay of 188 days with the following observations:

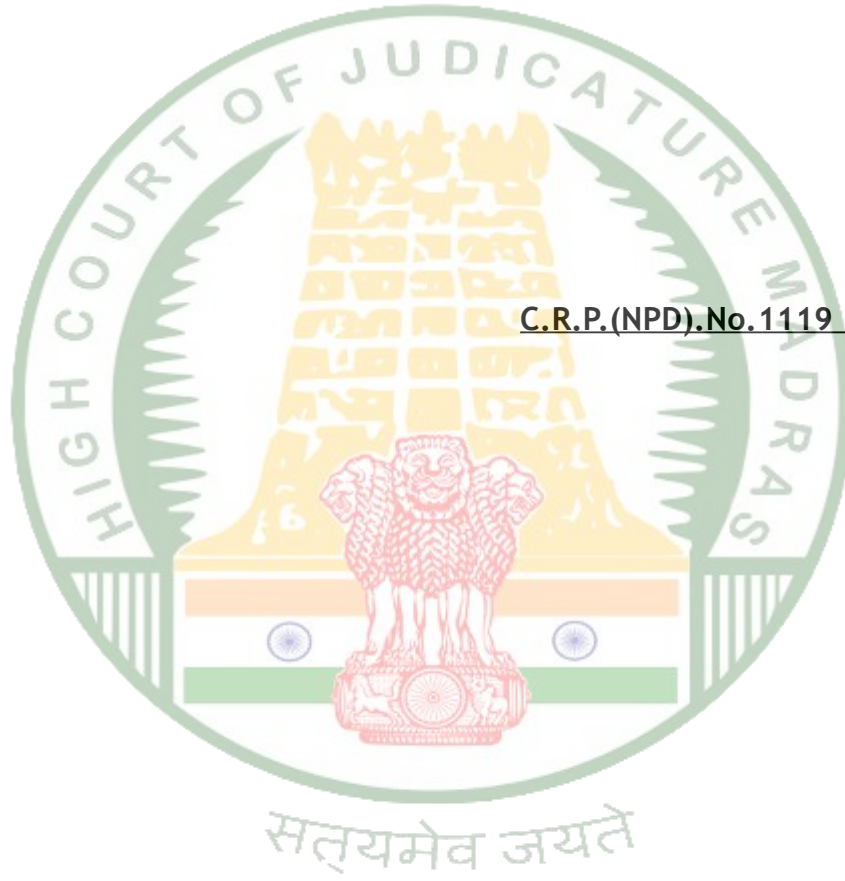
The suit O.S.No.8039 of 2009 was decreed on 29.11.2011. The appeal has been filed only on 05.10.2012 with a delay of 188 days. But, nothing have been stated in the petition that when the petitioners have obtained the copy of the Judgment and Decree and when they were made ready. Further, though the second petitioner was out of station, other petitioners were very much available. They could have approach their counsel and file the appeal. The petitioners are bound to explain each and every delay. But except the bald allegation that the second petitioner was out of station, there is no other reasons have been stated in the affidavit of the second petitioner for the enormous delay in filing the appeal. In the circumstances, this Court is of the view that this petition is liable to be dismissed.

7. In view of the above, this civil revision petition is dismissed. No cost.

29.04.2019

Index : Yes/No
Internet : Yes/No
kkd

To
VII Additional Judge,
City Civil Court, Chennai.



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