

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.1996 of 2014

and

M.P.No.1 of 2014

Ramasamy

... Petitioner

Vs.

Ammani

... Respondent

Prayer: Civil Revision petition is filed under Section 115 of CPC, to set aside the fair and final order dated 26.02.2014 made in I.A.No.124 of 2012 in O.S.No.122 of 2006 on the file of the District Munsif Court, Attur.

For Petitioner : Mr.Zeenath Begum

For Respondent : M/s.P.Veena

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ORDER

The present Civil Revision Petition is filed to set aside the fair and decretal order dated 26.02.2014 in I.A.No.124 of 2012 in O.S.No.122 of 2006 passed by the District Munsif Court, Attur.

2.The petitioner was the defendant in O.S.No.122 of 2006 before the District Munsif Court, Attur. The suit was filed by the respondent to partition the suit schedule properties and to appoint an Advocate Commissioner to divide them as per the terms of the preliminary decree with the help of a qualified surveyor. A preliminary exparte decree was passed on 14.09.2009 with a liberty to file an application to appoint an Advocate Commissioner to divide the suit properties.

3.The respondent further filed I.A.No.100 of 2010 to pass a final decree and for appointing an Advocate Commissioner with qualified surveyor to divide the suit properties into two equal shares by metes and bounds.

4.Thereafter, the petitioner/defendant had filed I.A.No.123 of 2012 under Section 5 of Limitation Act and Section 151 of CPC, to condone the delay of 672 days in filing the application to set aside the exparte decree on 14.09.2009 under Order 9 Rule 13 of CPC. The petitioner has stated that his son was suffering from blood cancer and eventually died on 19.01.2010.

5.The said application was dismissed by the Court on the ground that the petitioner has not produced any proof that his son was unwell. The petitioner further submitted that he was also unwell, therefore he could not take steps to file his written statement in time.

6.It is noticed that the suit is between members of the same family. In the written statement the petitioner has stated that the respondent is not his sister and therefore was not entitled to relief for partition.

7.The fact whether the respondent and petitioner are sister and brother goes to the root of the case. The Court has to therefore decide the case on merits. The petitioner is admittedly in possession of the suit property, in respect of which the respondent has also claimed partition and secured preliminary decree in her favour.

8.Considering the fact that the petitioner's son passed on 19.01.2010 after the filing the written statement, it would be unfair to deny a fair chance the petitioner to defend himself in the said suit.

9. Consequently, the present Civil Revision Petition is allowed is subject to payment of cost of Rs.15,000/- to the respondent within a period of four weeks from the date of receipt of a copy of this Order.

10. On such deposit of amount into the suit account within the aforesaid period, the Court below shall take up the case and dispose the same within a period of six months from the date of receipt of a copy of this order. The respondent shall be entitled to receive the amount.

11. The Civil Revision Petition is allowed with above observations. Consequently, connected Miscellaneous Petition is closed.

29.03.2019

Index : Yes/No
Internet : Yes/No
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To

1.The District Munsif Court,
Attur.

2.Ramasamy,
S/o.Dharmalingam, Kallathukkadu,
Kalpaganoor village, Attur Taluk,
Salem District.

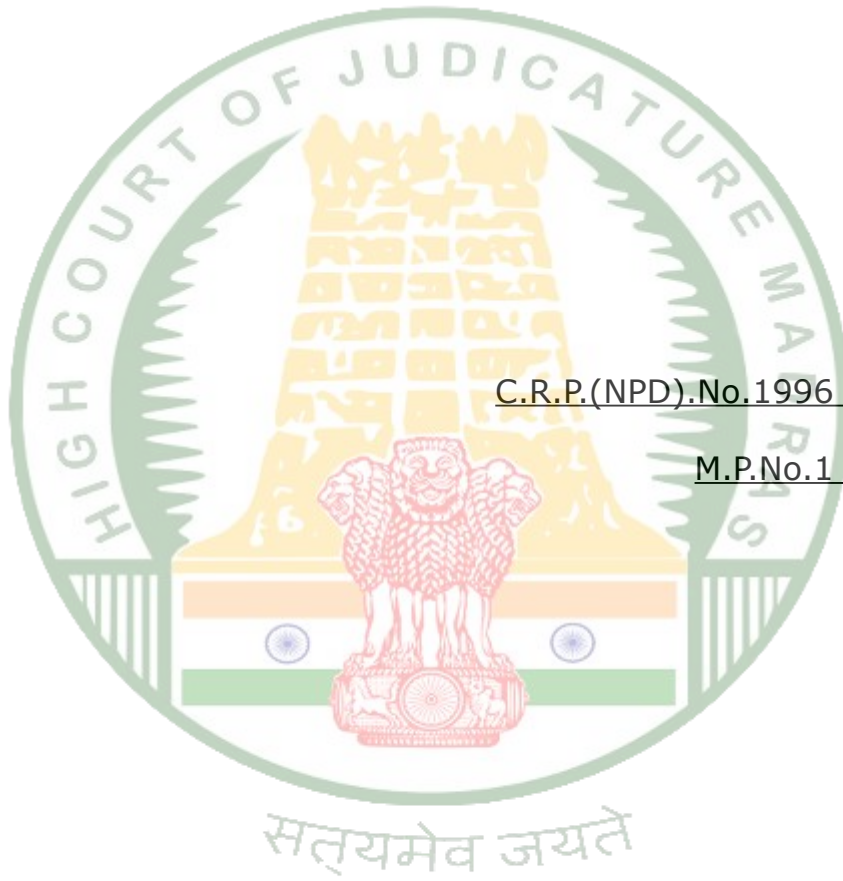
3.The Section Officer,
V.R.Section, High Court, Madras.



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C.SARAVANAN, J.

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