

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.2670 of 2014

and

M.P. No.1 of 2014

Selvi

.... Petitioner

versus

Vasanth

.... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order and decretal order passed in I.A. No.119 of 2012 in O.S. No.229 of 2003, dated 26.04.2013 on the file of the learned District Munsif, Jayamkondam and prays for setting aside the same.

For petitioner : Mr. S. Nagarajan

For respondent : Mr.C.A. Anburaja

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 26.04.2013 passed by the learned District Munsif, Jayamkondam in I.A. No.119 of 2012 in O.S. No.229 of 2003.

Brief facts leading to the filing of the instant Revision Petition

2. The petitioner is the plaintiff in the suit O.S. No.229 of 2003 on the file of the District Munsif Court, Jayakondam. She filed a suit for partition and the respondent is the second defendant in the suit and she is her own sister. A preliminary decree for partition was passed on 17.01.2006 and thereafter, a final decree came to be passed on 8.3.2010. In both the preliminary decree proceedings as well in the final decree proceedings, the respondent, who is the second defendant in the suit remained ex-parte. I.A. No.119 of 2012 was filed by the respondent under Section 5 of the Limitation Act in O.S. No.229 of 2003, seeking to condone the delay of 641 days in filing an application to set aside the ex-parte final decree, dated 08.03.2010 passed against her. The reasons given by the respondent / second defendant in the affidavit filed in support of I.A No.119 of 2012 for not defending the final decree proceedings is that the petitioner has wrongly mentioned the name of the husband of the respondent / second defendant as Rajarathinam instead of Rathinaswamy and therefore, she did not receive the notice either in the preliminary decree proceedings or in the final decree proceedings.

3. The Trial Court by its order dated 26.04.2013, after considering the affidavit filed in support of I.A. No.119 of 2012 as well as the counter affidavit, allowed I.A. 119 of 2012 condoning the delay of 641 days in filing the application to set aside the ex-parte final decree passed against the respondent / second defendant. Aggrieved by the order dated 26.04.2013 passed in I.A. No.119 of 2012 in O.S.No.229 of 2003, the petitioner, who is the plaintiff in the suit has filed this revision under Section 115 CPC.

4. Heard Mr. S. Nagarajan, learned counsel for the petitioner and Mr.C.A.Anburaja, learned counsel for the respondent.

Discussion :

5. It is an admitted fact that the respondent / second defendant is the sister of the petitioner / plaintiff. It is also an admitted fact that the respondent is entitled for a share in the suit schedule properties, which is the subject matter of partition suit O.S. No.229 of 2003 filed by the petitioner against the respondent as well as other defendants. It is also not in dispute that the name of the respondent / second defendant's husband was mentioned as Rajarathinam, but it is the contention of the respondent / second defendant that her husband's

name is Rathinaswamy. It is also alleged in the affidavit filed in support of I.A. No.119 of 2012 that only due to the wrong description of the respondent / second defendant husband's name in the suit by the petitioner, she did not receive notice either in the preliminary decree proceedings or in the final decree proceedings.

6. The Trial Court has considered all these aspects in the impugned order and only thereafter, allowed the application I.A. No.119 of 2012 in O.S.No.229 of 2003 filed by the respondent / second defendant seeking condonation of delay of 641 days in filing application to set aside the ex-parte decree.

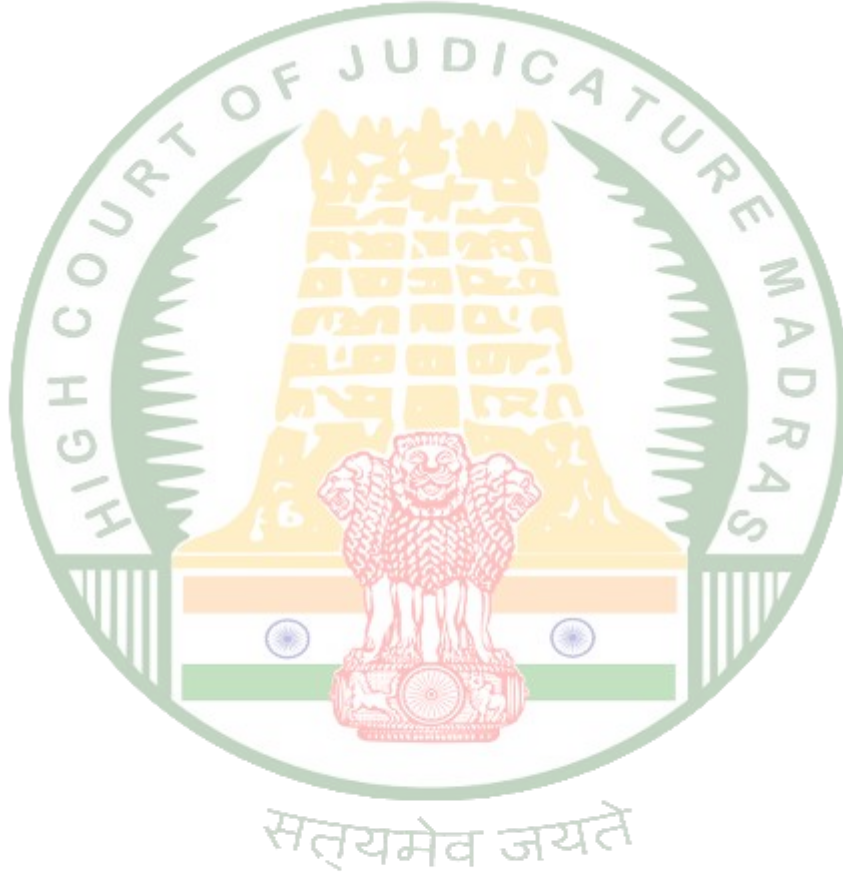
7. This Court has perused and examined the impugned order and does not find any infirmity in the order dated 26.04.2013 passed by the District Munsif, Jayamkondam in I.A. No.119 of 2012 in O.S. No.229 of 2003. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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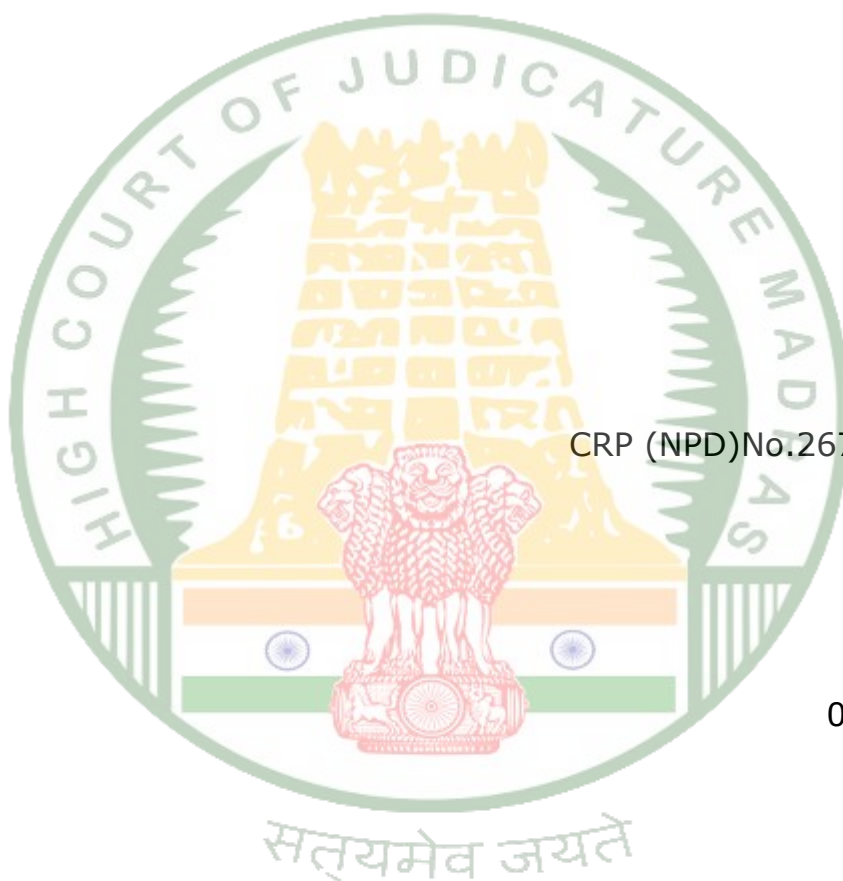
To
The District Munsif, Jayamkondam



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ABDUL QUDDHOSE, J.

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