

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.3199 of 2014

and

CRP (NPD) No.3200 of 2014

1. Palanisamy
2. Elumalai
3. Ravi
4. Venkatachalam
5. Ayyamperumal

... Petitioners in
CRP (NPD)
No.3199 of 2014

1. Murugesan
2. Manickam

.... Petitioners in
CRP (NPD)
No.3200 of 2014

versus

1. Ayyamperumal
2. Rajamani

... Respondents in both
CRPs

Prayer in CRP (NPD) No.3199 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 06.11.2013 made in I.A. No.46 of 2011 in Unnumbered A.S. of 2011 on the file of the Sub Court, Sankari.

Prayer in CRP (NPD) No.3200 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 06.11.2013 made in I.A. No.80 of 2011 in Unnumbered A.S. of 2011 on the file of the Sub Court, Sankari.

For Petitioners in both CRPs : Ms. Zeenath Begum
For Respondents in both CRPs : Ms.B.Sivani
for Mr.P.Valliappan

COMMON ORDER

CRP No.3199 of 2012 has been filed under Article 227 of the Constitution of India, challenging the order dated 06.11.2013 passed by the Sub Court, Sankari in I.A. No.46 of 2011 in unnumbered A.S. of 2011.

2. CRP No.3200 of 2014 has been filed under Article 227 of the Constitution of India, challenging the order dated 06.11.2013 passed by the Sub Court, Sankari in I.A. No.80 of 2011 in unnumbered A.S. of 2011.

3. The petitioners in both Civil Revision Petitions are the appellants in the respective appeals. They filed two suits O.S. No.154 of 2002 and O.S. No.151 of 2002 both for permanent injunction against the respondents. Similarly, the respondents also filed a suit O.S. No.25 of 2003 against the petitioners for partition and were filed together.

permanent injunction. All the suits were filed before the District Munsif, Sankari and were tried together.

4. A common judgment and decree dated 16.6.2010 was passed by the learned District Munsif, Sankari in O.S. No.151 of 2002, O.S. No.154 of 2002 and O.S. No.25 of 2003. Under the common judgment and decree O.S. No.25 of 2003 filed by the respondents were dismissed and O.S. No.154 of 2002 filed by the petitioners was partly decreed.

5. Aggrieved by the common judgment and decree, the respondents herein preferred an appeal as against the dismissal of the suit O.S. No.25 of 2003. Similarly, the petitioners herein aggrieved by the common judgment and decree dismissing their suit O.S. No.151 of 2002 and aggrieved by the partial decree granted in O.S. No.154 of 2002, preferred an appeal. However, both the appeals filed by the petitioners as against the common judgment and decree passed O.S. No.151 of 2002 and O.S. No.154 of 2002 was filed with a delay of 201 days. I.A. No.46 of 2011 was filed to condone the delay of 201 days in filing an appeal insofar as the suit O.S. No.154 of 2002

is concerned and I.A. No.80 of 2011 was filed to condone the delay of 201 days in filing an appeal as against the judgment and decree passed in O.S. No.151 of 2002. The reason given in the affidavit filed in support of the delay applications is that since the petitioners are working as stone breakers in stone quarry at Mylachandra, Chinnapekkur Taluk, Karnataka State for the past 15 years they were unable to contact their advocate on time and give instructions to him to file appeals.

6. A counter affidavit was filed by the respondents in both the Interlocutory applications

7. By separate orders dated 06.11.2013, I.A. Nos. 46 of 2011 in unnumbered A.S. of 2011 and I.A. No.80 of 2011 in unnumbered A.S. of 2011 were dismissed on the ground that no sufficient reasons have been given by the petitioner for condonation of the delay. Aggrieved by the dismissal, the instant Civil Revision Petitions have been filed.

8. Heard Ms.Zeenath Begum, learned counsel for the petitioners and Ms.B.Sivani, learned counsel for the respondent in both Civil Revision Petitions.

Discussion :

9. Admittedly, a common judgment and decree has been passed in O.S. No.151 of 2002, O.S. No.154 of 2002 and O.S. No.25 of 2013

by the District Munsif Court, Sankari. It is also an admitted fact that the respondents have also preferred an appeal as against the judgment and decree passed in OS. No.25 of 2013. Further, the petitioners and the respondents are family members. The respondents have sought for the relief of partition and injunction, whereas the petitioners through their suits have sought for permanent injunction. The issues involved in all three suits are common and the properties involved are also one and the same.

10. This Court has perused and examined the impugned orders. The Court below has not taken note of the fact that in all the three suits viz., O.S. No.154 of 2002, O.S. No.151 of 2002 and O.S. No.25 of 2003, the issues involved are common in nature and one party alone cannot be allowed to file an appeal and the other party cannot be disallowed to file an appeal which will amount to discrimination and denial of justice to one of the parties. Further the delay is only 201 days. The petitioners have also explained in the affidavit filed in support of the condone delay applications, the reasons for not filing the appeal on time as they have stated that they are stone brakers in stone quarry at Karnataka and due to the said reason, they were unable to give instructions to their advocates on time to file the

appeals.

11. For the foregoing reasons, this Court is of the considered view that the dismissal of I.A. No.46 of 2011 and I.A. No.80 of 2011 in unnumbered A.S. of 2011 by separate orders are erroneous orders and they have to be set aside.

Conclusion :

12. In the result, the following directions are issued :-

a) the impugned order, dated 06.11.2013 passed by the Trial Court in I.A. No.46 of 2011 in unnumbered A.S. of 2011 is hereby set aside.

b) the impugned order, dated 06.11.2013 passed by the Trial Court in I.A. No.80 of 2011 in unnumbered A.S. of 2011 is hereby set aside.

c) Accordingly, both Civil Revision Petitions are allowed. No costs.

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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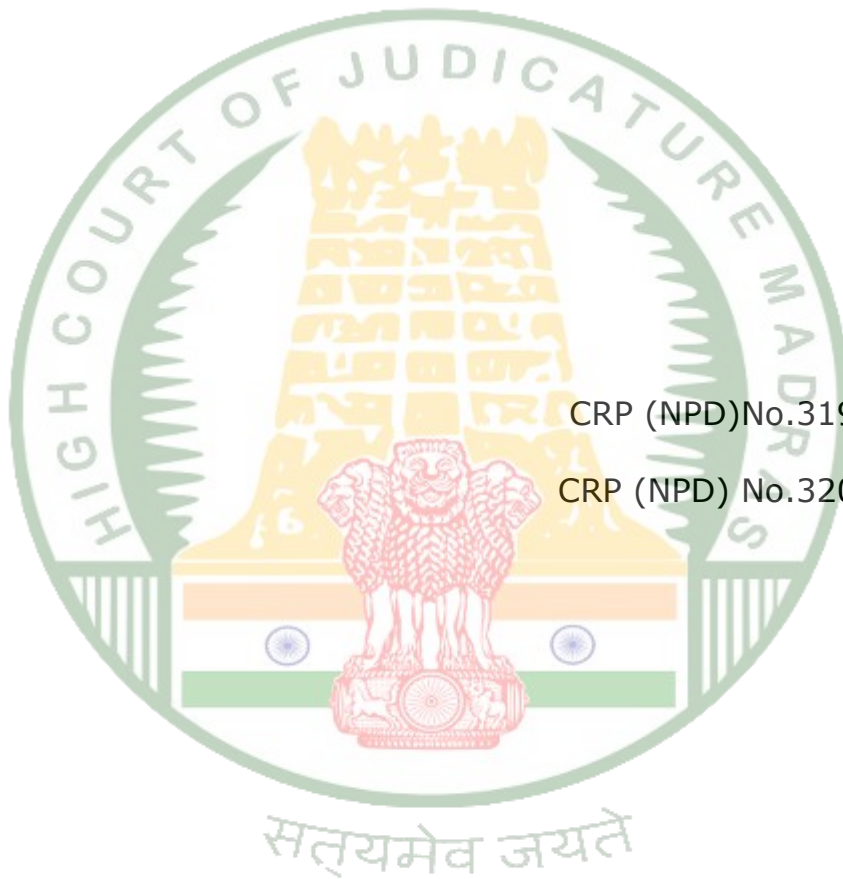
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The Sub Judge,
Sankari.

ABDUL QUDDHOSE, J.

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and
CRP (NPD) No.3200 of 2014

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