

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.3334 of 2014

Pappammal (deceased)
Mallika

..... Petitioner

versus

Mari (Deceased)
Dharmalingam

..... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the order dated 27.02.2014 made in I.A. No.44 of 2012 in I.A. No.140 of 2007 in unnumbered appeal in S.R. No.9192 of 2007 passed by the Principal Subordinate Judge, Thiruvannamalai.

For petitioner : Mr. S.Shanmugasundaram

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 27.02.2014 passed by the learned Principal Subordinate Judge, Thiruvannamalai in I.A. No.44 of 2012 in I.A. No.140 of 2007 in unnumbered appeal in A.S. S.R. No.9192 of 2007.

Brief facts leading to the filing of the instant Revision

Petition under Section 115 of CPC.

2. The petitioner is the plaintiff in the suit O.S. No.166 of 1990 and in that suit, she had sought for partition of suit property against her husband Mari. The suit was partly decreed in favour of the petitioner. As against the disallowed portion of the claim, the petitioner preferred an appeal before the learned Principal Subordinate Judge, Tiruvannamalai. Since, she was unable to pay the Court fee for filing the appeal, she filed I.A. No.140 of 2007 in unnumbered appeal in S.R. No.9192 of 2007 seeking to file the appeal as an Indigent person. The said application was dismissed for default. Thereafter, the petitioner filed I.A No.44 of 2012 in I.A. No.140 of 2007 in unnumbered appeal in A.S. S.R. No.9192 of 2007 to condone the delay of 1178 days in filing the application to restore I.A. No.140 of 2007, which was dismissed for default on 12.12.2008. The reason given in the affidavit for condoning the delay is that the petitioner was suffering from Jaundice and went to Bangalore to earn her livelihood. A counter affidavit was filed by the defendants in the suit, who are respondents in the proposed appeal denying the averments contained in the affidavit filed in support of I.A. No.44 of 2012.

3. By the impugned order dated 27.02.2014 in I.A. No.44 of 2012 in I.A. No.140 of 2007 in unnumbered appeal in A.S. S.R. No.9192 of 2007, the learned Principal Subordinate Judge, Tiruvannamalai, dismissed the condone delay application filed by the petitioner on the ground that no sufficient reasons have been given by her for condoning the inordinate delay and further no documentary evidence was produced in support of the reasons stated in her affidavit. Further, the Trial Court has dismissed the application only after considering the oral and documentary evidence let in by both parties in the said application. Aggrieved by the dismissal of I.A. No.44 of 2012 in I.A. No.140 of 2007 in unnumbered appeal in A.S. S.R. No.9192 of 2007, the instant Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code by the petitioner.

4. Heard Mr.S.Shanmugasundaram, learned counsel for the petitioner. Despite service of notice on the respondent and a counsel being represented by the respondent, there is no appearance on his side.

5. The delay sought to be condoned is an inordinate delay of 1178 days. This Court has perused and examined the impugned order.

As seen from the impugned order, it is seen that the petitioner has not produced any documentary evidence to establish that only due to jaundice and her absence due to her stay in Bangalore to eke out her livelihood, there was an inordinate delay. Further in the instant case, oral evidence was also let in by both the parties in I.A. No.44 of 2012.

6. The Trial Court has considered the oral and documentary evidence that were available on record and only thereafter, has come to the conclusion that no sufficient reasons have been given by the petitioner to condone the inordinate delay of 1178 days in filing the application to restore the application filed as an indigent person, which was dismissed for default on 12.12.2008.

7. For the foregoing reasons, this Court does not find any infirmity in the impugned order passed by the Trial Court. Accordingly, the Civil Revision Petition is dismissed. No costs.

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
vsi2

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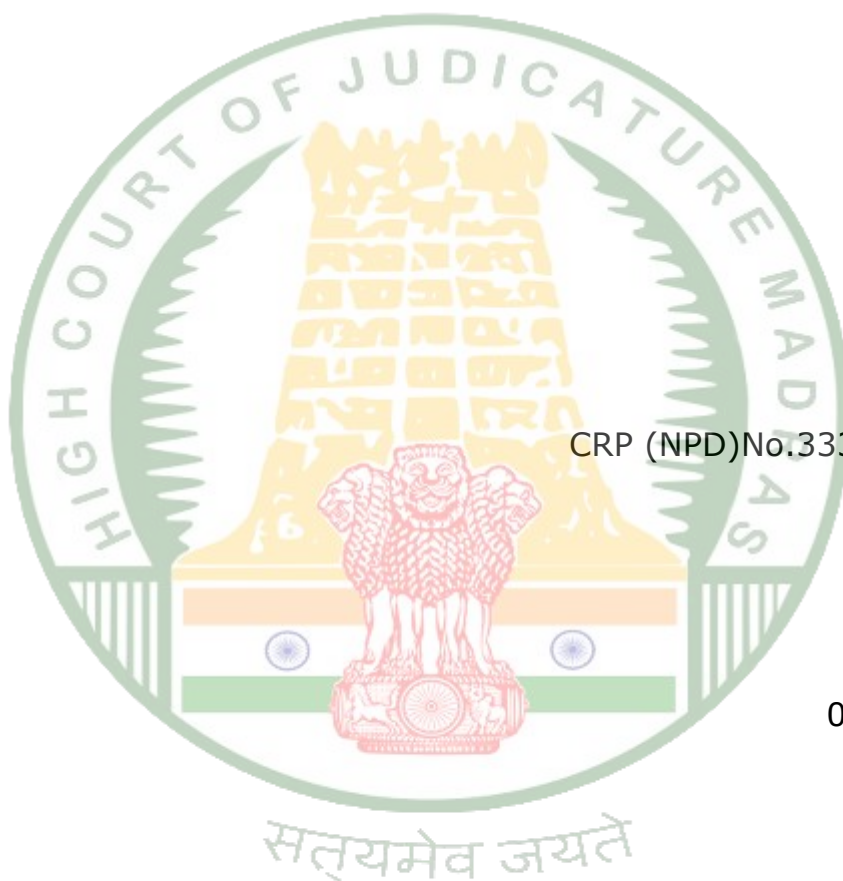
To
The Principal Subordinate Judge,
Thiruvannamalai.



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ABDUL QUDDHOSE, J.

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