

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD) No.3632 of 2014 &
M.P.No.1 of 2014

S.Padmanabhan @ sekar ... Petitioner

Vs.

1.Saradambal
2.Pushpa ... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decretal order in I.A.No.906 of 2013 in O.S.No.527 of 1996 dated 20.06.2014 on the file of the Principal District Munsif Court, Vellore, Vellore District.

For Petitioner ... Mr.G.Poonkundran

For Respondents Mr.K.L.Sekar

ORDER

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The instant Civil Revision Petition has been filed challenging the order dated 20.06.2014 passed by the learned Principal District Munsif Court, Vellore in I.A.No.906 of 2013 in O.S.No.527 of 1996.

Brief facts leading to the filing of the instant revision under Section 115 of the Code of Civil Procedure:

2. The petitioner is the second defendant in the suit O.S.No.527 of 1996 filed by the first respondent for partition. The first respondent/plaintiff and the petitioner/second defendant as well as the second respondent/third defendant are brothers and sisters. Since the petitioner/first respondent remained ex parte in the suit, despite service of the suit summons, an ex parte preliminary decree came to be passed in favour of the first respondent/plaintiff on 10.09.2003 in O.S.No.527 of 1996. I.A.No.906 of 2013 in O.S.No.527 of 1996 has been filed by the petitioner/second defendant to condone the delay of 3627 days in filing an application to set aside the ex parte preliminary decree dated 10.09.2003 passed in O.S.No.527 of 1996. The reason given in the affidavit filed in support of I.A.No.906 of 2013 is that the previous counsel of the petitioner/second defendant did not inform the status of the suit which resulted in the petitioner not coming to know about the passing of the ex parte preliminary decree dated 10.09.2003 passed in O.S.No.527 of 1996.

3. A counter affidavit has also been filed by the first respondent/plaintiff in I.A.No.906 of 2013 denying the allegations contained in the affidavit filed in support of I.A.No.906 of 2013 and has stated that no sufficient reasons have been given by the petitioner for condonation of the inordinate delay. By order dated 20.06.2014, the Trial court dismissed I.A.No.906 of 2013 on the ground that sufficient reasons have not been given by the petitioner to condone the inordinate delay of 3627 days in filing an application to set aside the ex parte decree. Aggrieved by the dismissal of I.A.No.906 of 2013, the instant Civil Revision Petition has been filed.

4. Heard Mr.G.Poonkundran, learned counsel appearing for the petitioner and Mr.K.L.Sekar, learned counsel for the respondents.

Discussion:

5. The only reason stated in the affidavit filed in support of the condone delay application is that the petitioner was not informed about the status of the suit by his previous counsel. However, the delay sought to be condoned is 3627 days which is an inordinate delay. The reason given in the affidavit is unacceptable as the delay sought to be condoned

is an inordinate one. The petitioner cannot put the blame on the previous counsel for the inordinate delay, The petitioner if he was interested in defending the suit, ought to have been vigilant. No believable reason has been given in the affidavit for the condonation of such an inordinate delay.

6. The judgments relied upon by the learned counsel for the petitioner in the case of **Sree Rajendra Mill Ltd vs. IOCEE Exports Ltd.**, reported in **2011 (3) CTC 684** and in the case of **N.Balakrishnan vs. M.Krishnamurthy** reported in **1998 (II) CTC 533** are not applicable for the facts of the instant case as the delay sought to be condoned in those cases are of much lesser period. In one case it is 1932 days and in the other case, it is 883 days whereas in the instant case, it is 3627 days. Further, the only reason given by the petitioner in the affidavit filed in support of condone delay application is that he was not informed by his previous counsel about the status of the suit and the passing of the ex parte preliminary decree. No documentary evidence has also been filed in support of his affidavit. This being the case, as rightly held by the Trial Court under the impugned order, no sufficient reasons have been

given by the petitioner for condonation of such an inordinate delay of 3627 days.

7. Even though the learned counsel for the petitioner before this Court had submitted that one of the heirs has been left out in the partition suit, the said plea was not taken by the petitioner in the affidavit filed in support of I.A.No.906 of 2013. Therefore that issue cannot be taken note of by this court in the stage of revision.

Conclusion:

8. This Court does not find any infirmity in the order passed by this Court. 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/Non-Speaking orders

सत्यमेव जयते

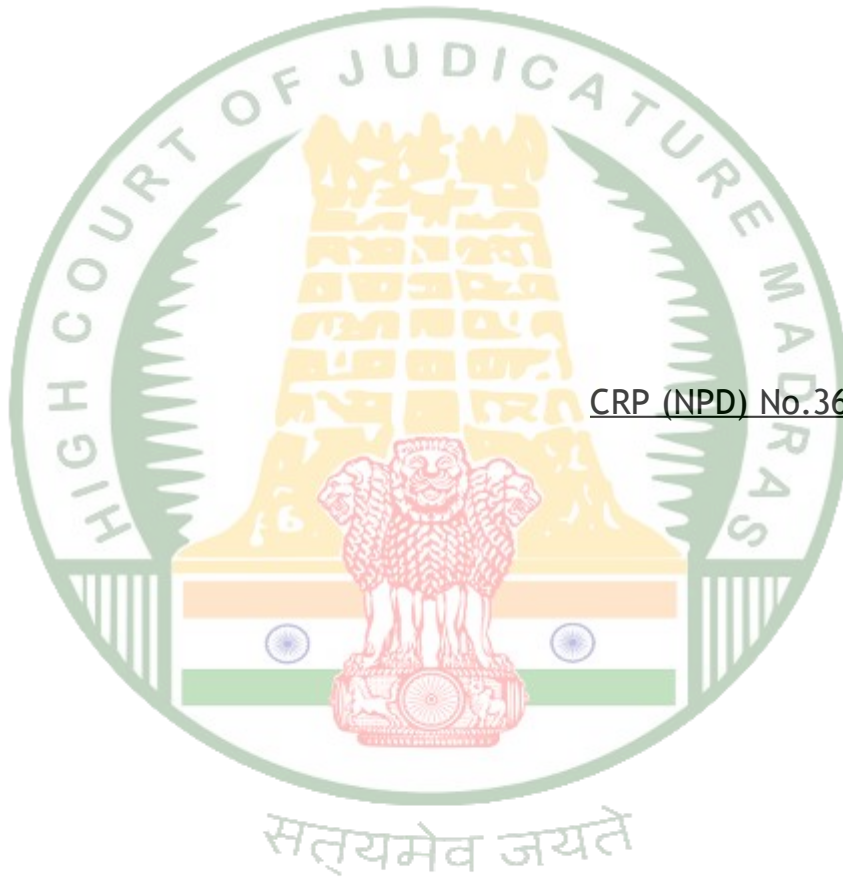
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ABDUL QUDDHOSE. J,

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To

The Principal District Munsif Court, Vellore District.



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