

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

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

C.R.P. (NPD).Nos.3865 & 3866 of 2014
and
M.P. Nos.1, 1 of 2014

Neelavathi ... Petitioner/defendant

Vs.

Ranganathan (deceased)

1.R.Saroja

2.Kalaivasuki

3.Ravi Kumar

4.R.Meenatchi

... Respondents/plaintiffs

5.Elumalai

Maniammal (died)

6.J.Subramani

7.J.Jayasankar

8.A.Rani

... Respondents/defendants

Prayer in C.R.P (NPD).No.3865 of 2014: Civil Revision petition is filed under Section 115 of C.P.C, to set aside the fair and decreetal order dated 27.06.2014 in I.A.No.1481 of 2013 in O.S.No.144 of 2004 on the file of Principal District Munsif Court, Gingee.

Prayer in C.R.P (NPD).No.3866 of 2014: Civil Revision petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 27.06.2014 in I.A.No.1482 of 2013 in I.A.No.1276 of 2010 in O.S.No.144 of 2004 on the file of Principal District Munsif Court, Gingee.

For Petitioner : Mr.G.Rajan in both CRPs
For Respondents : Mr.D.Ravichander
for RR1-4 in both CRPs

COMMON ORDER

The petitioner has filed C.R.P.No.3865 of 2014, against the fair and decreetal order in I.A.No.1481 of 2013 in O.S.No.144 of 2004 dated 27.06.2014 on the file of the Court of Principal District Munsif, Gingee and prays to set aside the same.

The petitioner has filed C.R.P.No.3866 of 2014, against the fair and decreetal order in I.A.No.1482 of 2013 in I.A.No.1276 of 2010 in

O.S.No.144 of 2004 dated 27.06.2014 on the file of the Court of Principal District Munsif, Gingee and prays to set aside the same.

2. The petitioner is the third defendant in O.S.No.144 of 2014 before the Sub-Court, Tindivanam. The above suit was filed to partition the Suit Schedule A and B properties. The plaintiff had claimed 5/12 share in suit Schedule A property and 1/2 share in the suit Schedule B property. Subsequently the suit was transferred to Sub-Court, Gingee.

3. The petitioner received summons both from the Sub-Court, Tindivanam and the additional summons after the suit was transferred to Sub-Court, Gingee.

4. However the petitioner/3rd defendant and the 2nd defendant choose to remain absent.

5. Thus, a Preliminary Decree dated 29.07.2009 and Final Decree dated 12.07.2012 were passed. Under these circumstances, the plaintiff

filed I.A No. 1276 of 2010 in the above suit for appointment of an advocate Commissioner to inspect and suggest modes of division of the suit schedule properties.

(a) The plaintiff has since deceased and is now represented by his legal heirs/representatives namely respondent No.1 to 4 in the present Civil Revision Petition.

(b) The 2nd defendant namely who has also since deceased is now represented his legal representatives.

(c) They have filed written statements on 15.06.2010 and 11.11.2013 in typeset.

6. On 25.02.2013, respondent Nos. 1 to 4 representing the interest of the deceased plaintiff filed E.P.No.51 of 2013 to execute the preliminary decree and final decree dated 29.07.2009 and 12.07.2012 respectively. When the respondents No.1 to 4 filed interlocutory application for taking delivery of the property, pursuant to the Final Decree passed in the above suit, the petitioner/third defendant filed the following interlocutory applications:-

i. In I.A.No.1481 of 2014 seeking to condone the delay of 1537 days in filing the application to set aside the preliminary ex parte decree dated 29.07.2009.

ii. In I.A.No.1482 of 2014 seeking to condone the delay of 459 days in filing the application to set aside the final decree dated 12.07.2012.

7. There applications were contested by the respondents and were dismissed by the Court below.

8. I have considered the arguments advanced on behalf of the petitioner and the respondents. After choosing to remain ex parte in the suit, the petitioner has come forward with I.A.Nos.1481 & 1482 of 2013 to condone the delay of 1537 days in filing applications to set aside ex parte decree passed on 29.07.2009 and to condone the delay of 459 days in filing the application to set aside the final decree dated 12.07.2012 in the above suit.

9. It is submitted that the ex parte preliminary and final decree were passed without considering the interest of the petitioner. It was submitted that the preliminary decree was devoid of any reasoning and therefore a nullity and therefore the court ought to have allowed the application even though there is a delay.

10. It was further submitted that the parties are members of the same family and therefore she should be given a fair chance to contest the preliminary and final decree. It was further submitted that as daughter, the petitioner had a statutory rights to a share in the property in the light of the amendment to the Hindu Succession Act, 1956 in the year 2005. Therefore, denial of the right to the petitioner to contest the partition suit results in denial of justice even though she had remained absent. She was also filed written statement but had failed to participate in the proceeding.

11. It was argued that the Schedule A property was an ancestral property and was in the name of the father of the plaintiff and the defendant Nos. 1 to 3 and therefore it was to be divided equally in

accordance with the law. As far as Schedule B property is concerned, it was submitted that it purchased out of the income from Schedule A property. It was not purchased by the plaintiff and the 1st defendant out of their own income and was liable to be divided equally.

12. Though these submissions go to the root of the case, the fact that the respective judgement and decree are ex parte and sans reasoning cannot be ignored. At the same time, the petitioner also chose to remain absent all through though for the reasons best known to her even though the suit summons was served by both the courts on her.

13. The petitioner has been negligent and therefore leaving the court with no other option but to pass the respective judgement and decree in the suit. If the petitioner had participated in the court proceedings perhaps the court would have come to different conclusion recognising the rights of the petitioner.

14. However, the reasoning given in the affidavit filed in support of the respective applications do not contain adequate reasons for the court to condone large of 1537 days and 459 days in approaching the Court.

15. Further, the Court below has considered the rival submissions and the evidence on record apart from the fact that the petitioner has received the suit summons to not only from the Sub-Court, Tindivanam but also from the Sub-Court, Gingee.

16. Therefore, I am of the view that the respective impugned fair and decretal order of the court in refusing to condone the delay in filing applications to set aside preliminary decree and the final decree has been rightly rejected.

17. Consequently, the present civil revision petition is liable to be dismissed. However, petitioner may raise such objections as are available in law in the execution of proceedings.

18. Thus, while upholding the respective impugned fair and decretal orders rejecting the petitioner's respective applications to condone delay to set aside ex parte preliminary decree dated 29.07.2009 and final decree dated 12.07.2012, the rights of the petitioner to raise such objections as are available in law in the execution proceedings are preserved and shall not be circumscribed by the dismissal of the present Civil Revision Petitions.

19. Both the above Civil Revision Petitions are dismissed with the above observation. No cost. Consequently, connected Miscellaneous Petitions are closed.

सत्यमेव जयते

25.04.2019

arb/jen

Index : Yes/No

Internet : Yes/No

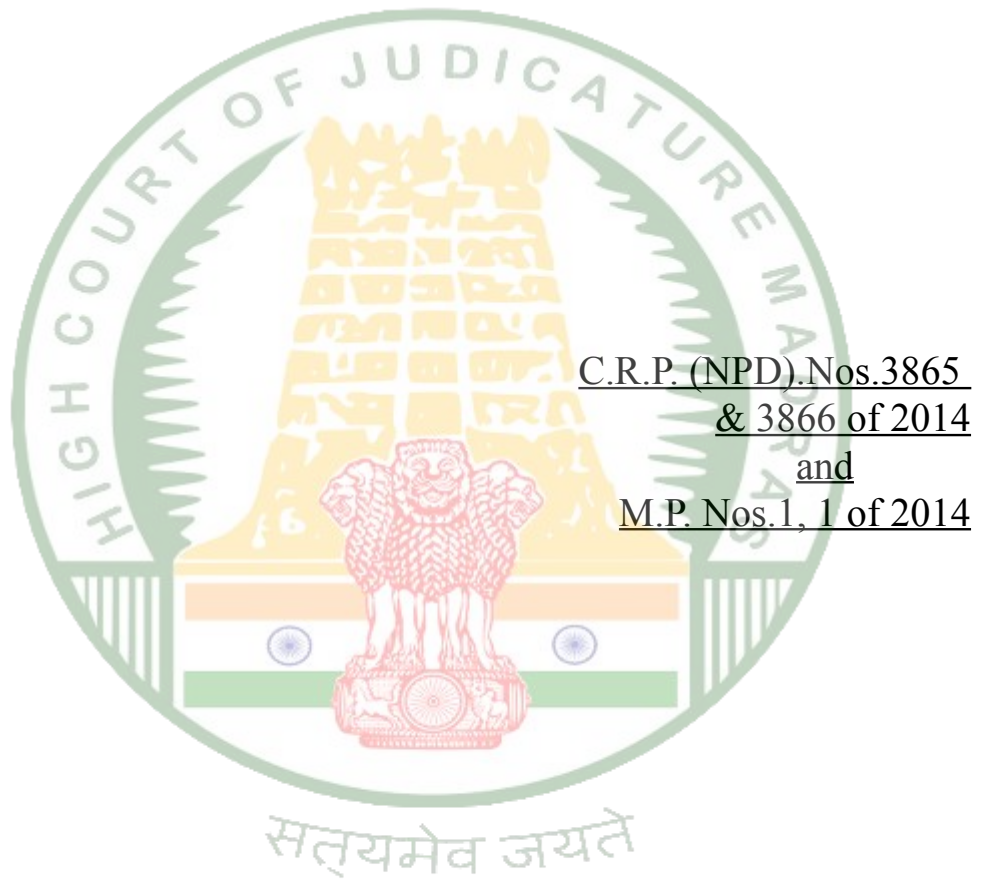
To

1. The Principal District Munsif Court,
Gingee.

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

C. SARAVANAN, J.

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