

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD) No.4279 of 2014

&

M.P.No.1 of 2014

D.Elumalai

... Petitioner

Vs

1.Parvathi

2.Chinnamal

3.Pattu

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and final order in I.A.No.1562 of 2013 in O.S.No.156 of 2012 dated 24.07.2014 on the file of the Principal District Munsif Court, Gingee.

For Petitioner : Ms.R.Hemavathi
for A.Sivaji

For Respondents : Mr.G.Sugadev Rajaguru

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 24.07.2014 passed by the learned Principal District Munsif, Gingee in I.A.No.1562 of 2013 in O.S.No.156 of 2012.

Brief facts leading to the filing of the instant revision:

2. The petitioner is the defendant in the suit O.S.No.156 of 2012 and he is the brother of the respondents who are the plaintiffs. The respondents filed the said suit for partition before the learned Principal District Munsif, Gingee. The petitioner was set ex parte in the said suit and thereafter, an ex parte decree dated 30.08.2012 came to be passed against the petitioner. The petitioner filed I.A.No.1562 of 2013 in O.S.No.156 of 2012 seeking to condone the delay of 390 days in filing an application to set aside the ex parte decree dated 30.08.2012. The reason given in the affidavit filed in support of I.A.No.1562 of 2013 is that the petitioner was suffering from chikungunya and hence, could not attend to the suit filed by the respondents.

3. A counter affidavit was also filed by the respondents in I.A.No.1562 of 2013 in O.S.No.156 of 2012. The Trial Court, by its order dated 24.07.2014, dismissed I.A.No.1562 of 2013 in O.S.No.156 of 2012 filed by the petitioner on the ground that the petitioner has not produced any documentary evidence to prove that he was suffering from chikungunya and therefore, no sufficient reasons have been given by the petitioner for condoning the delay of 390 days in filing an application to

set aside the ex parte decree dated 30.08.2012. Aggrieved by the dismissal of I.A.No.1562 of 2013 in O.S.No.156 of 2012, the instant civil revision petition has been filed.

4. Heard Ms.R.Hemavathi, learned counsel for the petitioner and Mr.G.Sugadev Rajaguru, learned counsel for the respondents.

Discussion:

5. Admittedly, the suit filed by the respondents against the petitioner is a partition suit and the petitioner is the brother of the respondents. The reason given by the petitioner in the affidavit filed in support of I.A.No.1562 of 2013 in O.S.No.156 of 2012 seeking for condonation of delay is that he was suffering from chikungunya. The Trial Court has dismissed the said application on the ground that no documentary evidence has been produced to show that the petitioner was suffering from chikungunya. But being a partition suit and considering the fact that the petitioner is the brother of the respondents, the Trial Court ought to have considered this aspect as well, before passing the final orders in I.A.No.1562 of 2013 in O.S.No.156

of 2012.

6. Considering the above, this Court is of the considered view that the impugned order will have to be set aside. However, for the negligence on the part of the petitioner in not attending the suit diligently, the petitioner will have to be mulcted with some costs.

Conclusion:

7. In the result, the impugned order dated 24.07.2014 passed by the learned Principal District Munsif, Gingee in I.A.No.1562 of 2013 in O.S.No.156 of 2012 is hereby set aside, on condition that the petitioner pay a sum of Rs.1,000/- to each of the respondents within a period of four weeks from the date of receipt of a copy of this order. If the petitioner fails to pay the said amount, the civil revision petition shall stand automatically dismissed and the respondents are granted liberty to proceed with I.A.No.1390 of 2013 in O.S.No.156 of 2012 filed by them for final decree.

8. Accordingly, the civil revision petition is disposed of. No

costs. Consequently, connected miscellaneous petition is closed.

27.06.2019

nl

Index: Yes/ No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

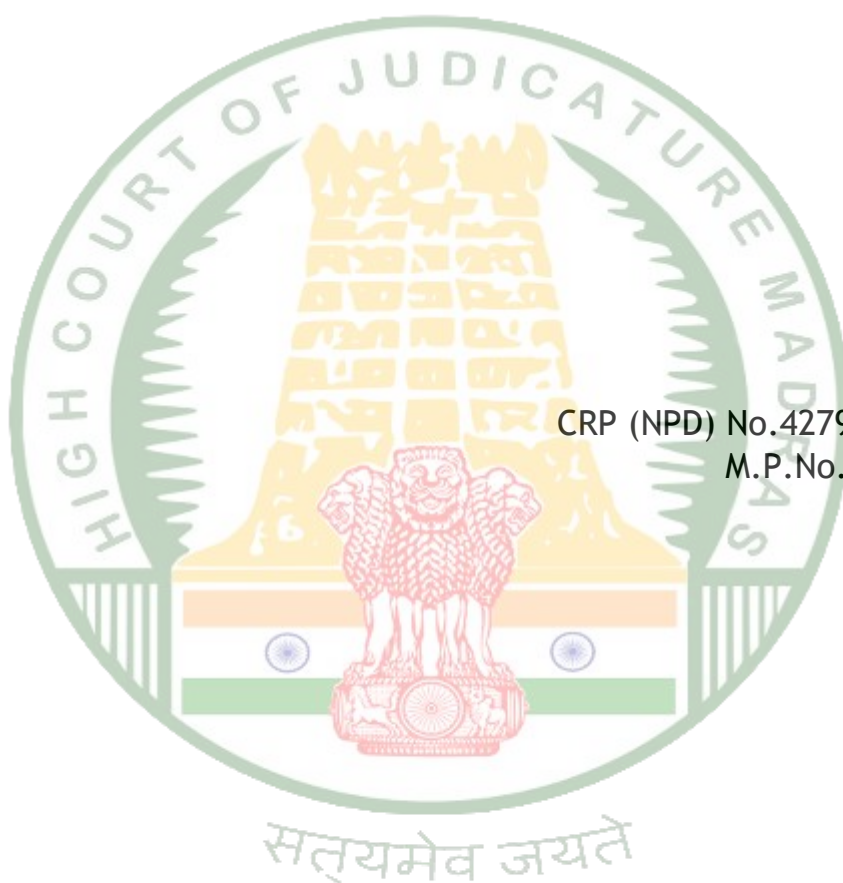
The Principal District Munsif Court, Gingee.



WEB COPY

ABDUL QUDDHOSE, J.

nl

CRP (NPD) No.4279 of 2014 &
M.P.No.1 of 2014

WEB COPY 27.06.2019