

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.No.69 of 2020

and

C.M.P.No.420 of 2020

1. Saraswathi
2. R.Devaraj
3.R.Kalisamy

... Petitioners/
Respondents/palintiffs

Vs.

K.Kumarasamy

.. Respondent/
Petitioner/Defendant

Prayer: Civil Revision Petition filed under Section 115 of the C.P.C. against the fair and decreetal order dated 29.08.2019 made in I.A.No.78 of 2019 in I.A.No.141 of 2018 in O.S.No.652 of 2007, before the II Additional Subordinate Judge, Coimbatore.

For Petitioners

: Mr.C.R.Prasanan

O R D E R

Revision has been filed against the order allowing the application to condone the delay of 26 days in filing a review application.

2. The suit is for partition. Petitioners are the plaintiffs in the suit. Earlier, a preliminary decree has been passed and thereafter, on an application filed by the plaintiffs, the trial Court passed the final decree. Now, to review the final decree, the respondent / first defendant, filed a review application with a delay of 26 days and also a petition to condone the said delay. The trial Court after hearing both the parties allowed the application on payment of Rs.1,000/-. Now challenging the same, the present revision has been filed.

3.The learned counsel appearing for the petitioners/plaintiffs would contend that the review is not maintainable in law. After the preliminary decree, a Commissioner was appointed and even though Commissioner

issued notice to the respondent/first defendant, he refused to receive the notice and the Commissioner visited the premises and filed a report. As no objections have been raised against the Commissioner's report, the trial Court passed the final decree. Thereafter, the present review application has been filed vexatiously with a delay and the trial Court has numbered both the condone delay application and the review application together and allowed the application to condone the delay and now insisting the petitioners/plaintiffs to argue the review application. The method adopted by the trial Court is illegal and the trial Court ought not to have numbered both the application together and decided the issue.

4. I have heard the learned counsel appearing for the parties and also perused the records carefully.

5. It is only an application to condone the delay of 26 days in filing the review application. Considering the cause shown by the respondent / first defendant, for the delay in filing the review petition, the trial Court exercised discretion and allowed the application on payment of cost of Rs.1,000/-. Considering the fact that it is only a delay of 26 days and the application has been allowed on payment of cost, I do not find any error in the order passed by the trial Court and there is no merit in the revision and the same is liable to be dismissed.

6. In the result, the civil revision petition is dismissed and the order of the Court below, impugned in this revision is hereby confirmed. It is open to the petitioners/plaintiffs to raise all their objections in the review application by filing necessary affidavit and the trial Court is also directed to consider the review application with all seriousness and pass orders in the review application within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kk

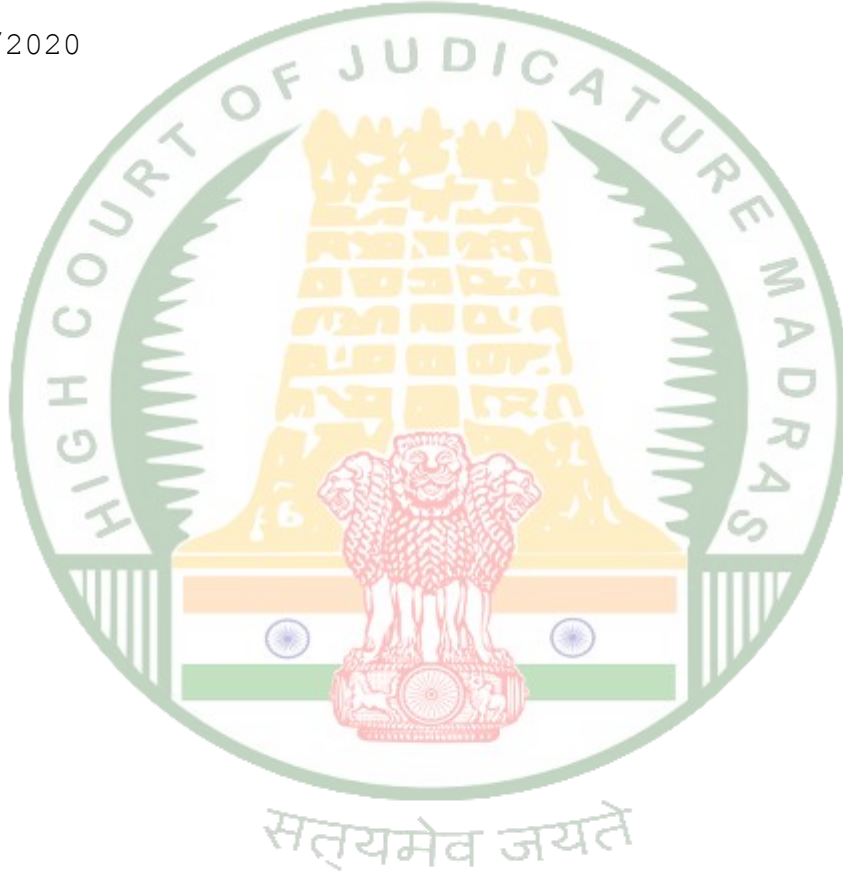
To

The II Additional Subordinate Judge,
Coimbatore.

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.2999

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VBA (CO)
KKV/20/05/2020



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