

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 13.02.2020

ORDER PRONOUNCED ON : 19.02.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD) No.3798 of 2012

1.Kuppayee
2.Chinnusamy
3.Maniammal
4.Subramani
5.Sakthivel
6.Mahalingam
7.Karunanidhi

... Petitioners

...Versus...

Periyan (Died)
1.Andiyammal
2.Rajammal
3.Ganeshraj
4.Thangavel
5.Santhamani

Chinna Gounder (died)
Chinna Gounder @ Chinnan (died)
Vellaiyan (died)
Poochi (died)

6.Periyasamy
Chinnasami (died)
Meyyammal (died)
7.Madammal

WEB COPY

Krishnan (died)

8.Rajavalli

9.Arjunan

10.Annamalai

11.Pushparani

12.Palaniammal

13.Lakshmi

14.Mani

15.Ashokan

16.Kolandaiammal

17.Thangamani

18.Krishnaveni

19.Jayamani

20.Manjula

21.Venkatachalam

22.Ilayaraja

23.Rasathi

24.Minor Lakshmi

25.Minor Aravind

26.K.Sakunthala

27.Satheesh Mani

28.Rajesh

29.Minor Selvi enkateswari

[Minor rep.by her natural friend and mother
Sakunthala]

... Respondents

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the dismissal of fair and decretal order dated 19.06.2012 made in I.A.No.154 of 2006 on the file of the Principal District Judge, Salem in unnumbered A.S.No.....of 2006 on the file of the Principal District Judge, Salem.

For Petitioner	::	Mr.V.R.Rajasekaran
For R1 to R5	::	Mr.P.Jagadeesan
For R7	::	Given up
For R6,R8 to R29	::	No appearance

O R D E R

The legal heirs of the defendants in O.S.No.295 of 1981 are the revision petitioners herein.

2. The respondents herein filed O.S.No.295/1981 for partition and the preliminary decree was passed, as against which, they filed A.S. before the District Court in unnumbered A.S.No.....of 2006 and the same was disposed of. Subsequently, the final decree proceedings have been initiated and the trial has already been completed. After passing of the final decree, the defendants preferred unnumbered A.S.SR.No.....of 2006 and as there was a delay of 288 days in filing appeal, they filed I.A.No.154 of 2006 alleging that though they engaged an Advocate, he is not properly conducted the case, though they had given instructions. The respondents has not filed counter in the final decree proceedings and the counsel has not informed the parties regarding the disposal of the final decree proceedings and hence, seeks to condone the said appeal.

3. The respondents/plaintiffs have filed counter affidavit before the trial Court alleging that after the disposal of the First Appeal against the preliminary decree, they preferred I.A.No.798 of 2002 for passing of the final decree, in which the Advocate Commissioner was appointed and

thereafter, the said Advocate Commissioner has inspected the suit property 3 times and during the inspection by the Advocate Commissioner, the petitioners herein have also been present and it is a specific case in the counter affidavit that after the passing of the final decree, they registered the final decree order in Sub-Registrar Office in Doc.No.57/06, dated 20.02.2006 and thereafter, based upon the return of the portion, they have also effected patta in their name and also in Revenue Records in the Sub Registrar Office and also change of name has been effected. Thereafter, they also alienated the property.

4. The learned Principal District Judge, Erode has dismissed the condone the delay petition on the ground that the petitioners were not diligent among in prosecuting the case and there is a ample evidence to show that they were aware of the final decree proceedings and dismissed the I.A and hence, the Civil Revision Petition.

5. Heard both sides and perused the records.

6. It is a specific case of the respondents/plaintiffs that during April 2005, Advocate Commissioner has been appointed by the Court in the final decree proceedings and the Advocate Commissioner has inspected the suit property and during the inspection, the parties were

present. A detailed report of the Advocate Commissioner was filed in the court on 10.10.2005 and since no objection was filed, final decree was also passed on 22.11.2005 and Exhibits R1 and R2 were marked.

7. It is seen that the petitioners herein who are the defendants in the suit, have not filed any counter affidavit in the final decree proceedings. Advocate Commissioner is also appointed in the proceedings. He had inspected the schedule properties more than 3 times and it is a specific averment that during his visit, the present petitioners have appeared before the Advocate Commissioner, but they have not filed any objection as to the mode of division suggested by the Advocate Commissioner in his report on 10.10.2005. Therefore, based upon the Advocate Commissioner's report, final decree was also passed on 22.11.2005 and based upon the same, the respondents 2 to 6 herein have also registered the final decree proceedings before the Sub Registrar Office in Doc.No.57/06, dated 20.02.2006. Thereafter, they have also taken possession of the respective shares as per the final decree and they have also moved the Revenue officials namely, Taluk office for mutation of patta in their name and after perusing the final decree proceedings which was registered before the Sub Registrar Office in Doc.No.57/06, the Revenue Officials also effected mutation of name in the Revenue Records and issued separate patta for the purpose.

Thereafter, the respondents also sold the portion of the land through various sale deeds.

8. When such being the case, this Court is unable to accept the reason assigned by the petitioners that the counsel engaged by the petitioners herein has not conducted the case properly. I find it is only a reason to give an excuse for the long delay and hence, this Court is of the considered view that the petitioners has not stated any sufficient reason and sufficient cause to condone the delay in filing appeal. The reasons so attributed also do not appear to be bona-fide and it is only found to be lame excuse and hence, the order passed by the trial Court in rejecting the application on different reasons is confirmed.

9. In this view of the matter, I do not find any reason to condone the delay and hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY 19.02.2020

nvi

Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

To

The Principal District Judge, Salem

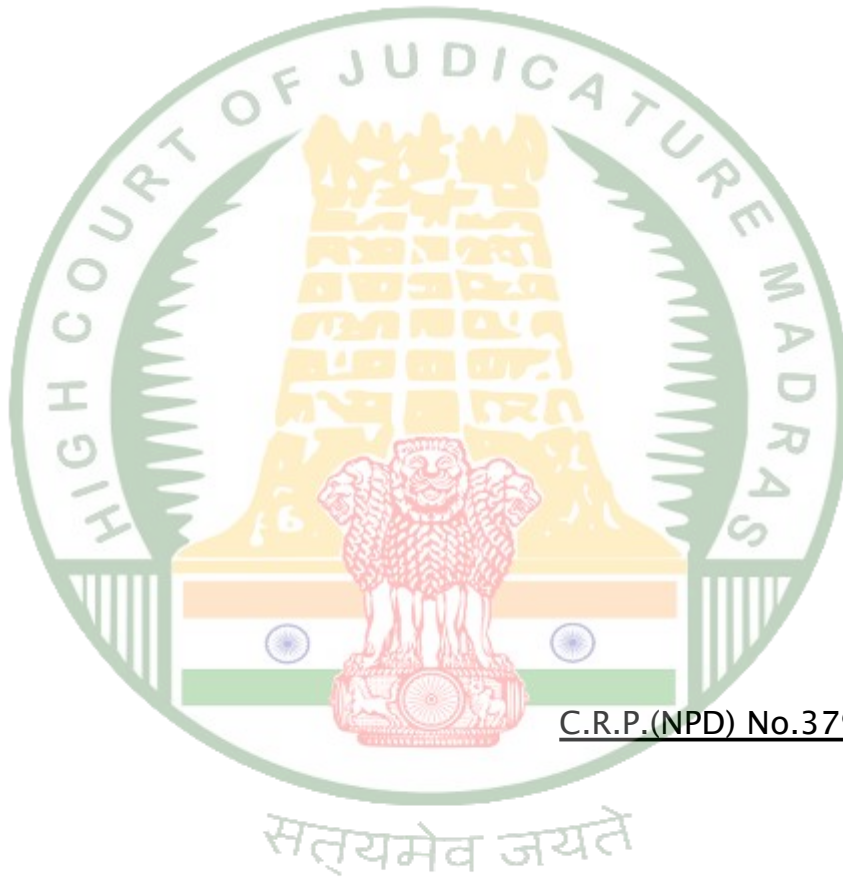


WEB COPY

C.R.P (NPD) No.3798 of 2012

RMT.TEEKAA RAMAN,J.,

nvi



order in
C.R.P.(NPD) No.3798 of 2012

WEB COPY

19.02.2020