

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.432 of 2011
& MP No.1 of 2011

1.Bhuvaneswari
2.Valli
3.Pushpa

..Petitioners

Vs

1.Rajappan(died)
2.Lakshmi
3.Malarkodi
4.Jayanthi
5.Shanthi
6.Krishnamurthy

...respondents

(RR2 to 6 brought on record as Lrs of the deceased
sole respondent viz., Rajappan vide court order
dated 26.09.2018 made in MP Nos.1 to 3 of 2015
in CRP (NPD) No.432 of 2011)

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the orders of the learned Principal Subordinate Judge of Krishnagiri, dated 16.08.2010 in I.A.No.415 of 2009 in O.S.No.106 of 2000 and allow the above CRP.

For Petitioner : Mr.Karthikeyan for Mr.V.Nicholas

For Respondents : Mr.P.Mani for R4 & 6

ORDER

The petitioner has filed a suit in O.S.No.106 of 2000 on the file of the Principal Subordinate Judge, Krishnagiri. The respondent appeared and has also filed written statement. When the suit was listed for trial, the suit was dismissed for default. Thereafter, the petitioner filed an application to restore the suit. But, there was a delay of 1088 days in filing the restoration petition. The said petition was dismissed by the trial Court. Challenging the said order passed by the trial Court, the plaintiff is before this Court by way of filing the present Civil Revision Petition.

2.The learned counsel for the petitioner would submit that the suit is only for partition. The parties are illiterates and they hail from a small village and they are not available since left to Andhra Pradesh to eke out their livelihood and thereby they could not contact their counsel and in such circumstances, they could not file the application in time. He would submit that since the rights of the parties were involved, the suit has to be restored.

3. Learned counsel for the respondents 4 & 6 would submit that after filing the written statement and since the parties have already vacated the property, therefore, they allowed the suit to be dismissed for default. Subsequently, they have not taken any steps to restore the suit within the time frame. Since no proper reason has been assigned, the trial Court has rightly dismissed the application.

4. Heard, Mr.Karthikeyan for Mr.V.Nochoolas, learned counsel for the petitioners and Mr.P.Mani, learned counsel for the respondents 4 & 6.

5.I have perused the entire materials placed on record. The petitioner has filed a suit in O.S.No.106 of 2000 on the file of the Principal Subordinate Judge, Krishnagiri. The suit was dismissed for default. Subsequently, the petitioner filed an application to restore the suit for which there was a delay of 1088 days. Therefore, the application was filed to condone the delay of 1088 days in filing the petition for restoration of suit and though the reasons have not been properly assigned, since it is a suit for partition, this Court is of the view that the suit can be decided on merits based on the evidence being adduced by the parties. However, since the petitioner has filed the suit and allowed to dismiss for default and filed restoration application only after

1088 days, inconvenience caused to the respondents has to be compensated with costs.

6. Therefore, this Civil Revision Petition is allowed subject to the condition that the petitioner is directed to deposit a sum of Rs.20,000/- before the trial Court within a period of four weeks. On such deposit being made, the trial Court is directed to restore the suit and after hearing both the parties, dispose of the same in accordance with law within a period of six months. In case, the amount is not deposited within four weeks, the Civil Revision Petition shall stand dismissed automatically without any further reference to this Court. The respondents are permitted to withdraw the amount to be deposited into the Court without filing any formal application. The trial Court is directed to issue a fresh notice to the respondents, those who have not appeared before this Court in this revision.

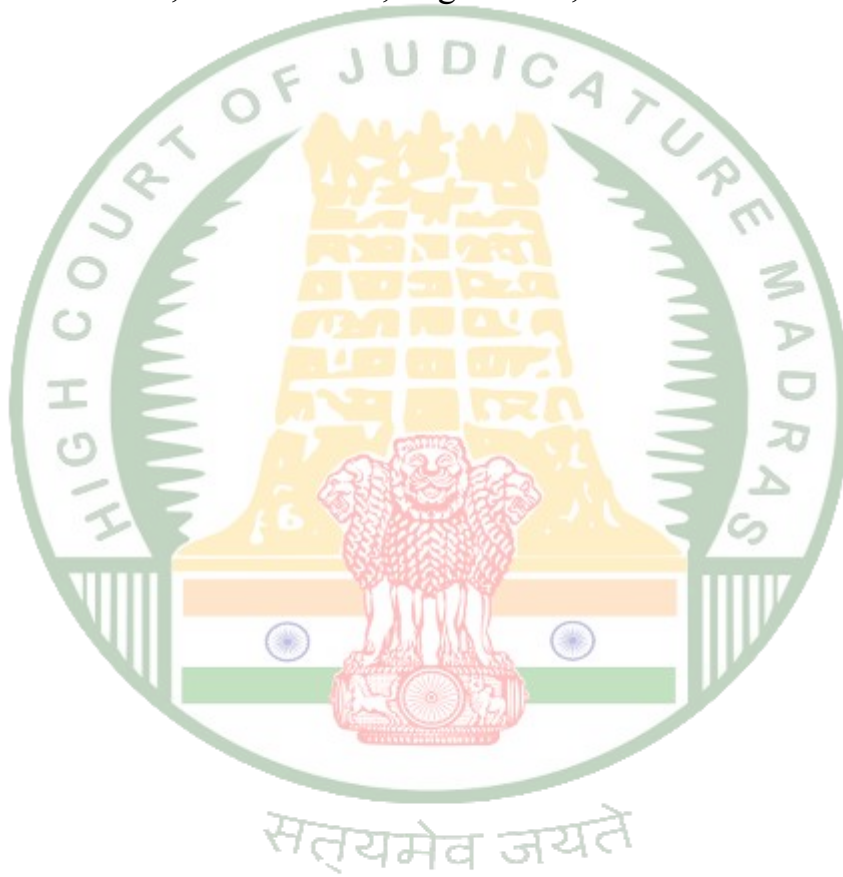
7. Accordingly, the Civil Revision Petition is allowed with cost. Consequently, connected miscellaneous petition is closed.

23.07.2020

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To

1. The Principal Subordinate Judge of Krishnagiri
2. The Section Officer, V.R. Section, High Court, Madras



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C.R.P.(PD).No.432 of 2011

P.VELMURUGAN, J.

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