

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).Nos.913 and 1858 of 2015
and
M.P.No.1 of 2015

Gopal ... Petitioner in CRP.No.913/2015
1.Dhanalakshmi
2.Bhavani ... Petitioners in CRP.No.1858/2015
Vs.
Sundari ... Respondents in both CRPs.

Common Prayer: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 27.06.2014 passed in I.A.Nos.133 and 134 of 2013 respectively, in O.S.No.129 of 2009 on the file of the Subordinate Judge, Thiruvannamalai District.

For Petitioner in
CRP.No.913/2015 : Mr.Ashokpathy

For Petitioners in
CRP.No.1858/2015 : Mr.V.Achuthanandan

For Respondent
in both CRPs. : No appearance

COMMON ORDER

CRP.(NPD).No.913 of 2015 has been filed by the petitioner/first defendant against the dismissal of his application in I.A.No.133 of 2013 in O.S.No.129 of 2009 on the file of the Sub-Judge, Arani, dated 27.06.2014.

CRP.(NPD).No.1858 of 2015 has been filed by the petitioners/defendants 2 and 3 against the dismissal of their application in I.A.No.134 of 2013 in O.S.No.129 of 2009 on the file of the Sub-Judge, Arani, dated 27.06.2014.

2. The petitioner in CRP.(NPD).No.913 of 2015 had filed an application in I.A.No.133 of 2013 in O.S.No.129 of 2009 on the file of the Sub-Judge, Arani, under Section 5 of the Limitation Act, to condone the delay of 153 days in filing the petition to set aside the exparte preliminary decree dated 13.07.2012.

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3. The petitioners in CRP.(NPD).No.1858 of 2015 also filed an application in I.A.No.134 of 2013 in O.S.No.129 of 2009 on the file of the Sub-Judge, Arani, under Section 5 of the Limitation Act, to

condone the delay of 153 days in filing the petition to set aside the exparte preliminary decree dated 13.07.2012. The learned Sub-Judge, by the separate orders had dismissed the said applications. Feeling aggrieved, the petitioners herein/defendants have filed the present Civil Revision Petitions.

4. When these matters came up for hearing i.e., on 09.11.2020, the learned counsel for the petitioners have submitted that they are ready for arguments, but, there was no representation for the respondent and hence, in order to give one more opportunity to the respondent, these matters have been adjourned and posted today under caption “for orders.” Today also, there is no representation for the respondent. Hence, after hearing Mr.Ashokpathy, the learned counsel for the petitioner in CRP.(NPD).No.913 of 2015 and Mr.V.Achuthanandan, the learned counsel for the petitioner in CRP.(NPD).No.1858 of 2015 and perusing the materials filed along with these petitions, a common order is being passed in these Civil Revision Petitions.

5. The learned counsel for the petitioners have submitted that the respondent herein had filed a suit in O.S.No.129 of 2009 on the

file of the Sub-Judge, Arani, to divide the suit properties into four equal shares and allot one such share to her. They further submitted that the respondent is the daughter of the petitioner in CRP.(NPD).No.913 of 2015 and sister to the petitioners in CRP.(NPD).No.1858 of 2015. They further submitted that after receipt of summons, the petitioners entered appearance through their advocates and took adjournment for filing written statement but, subsequently when the matter was posted for trial, the petitioners' counsel sent a letter to them but, unfortunately the said letter not received by the petitioners and hence, they could not give instruction to their counsel for filing written statement, consequently, they were set exparte and an exparte preliminary decree was passed on 13.07.2012.

6. They further submitted that the petitioners came to know about the said exparte decree only after receipt of the notice in the final decree application and thereafter, immediately, they have filed the petitions to set aside the exparte decree along with the petitions to condone the delay of 153 days in filing the said petitions but, the learned Sub-Judge, without considering the aforesaid facts, had erroneously dismissed the said petitions. They further submitted that the petitioners

are having valid defence in the suit and therefore, they prayed to grant one more opportunity to the petitioners to defend the suit and therefore, they prayed to allow these Civil Revision Petitions and set aside the orders passed by the learned Sub-Judge, in I.A.Nos.133 and 134 of 2013 and allow the said applications.

7. A perusal of the typed set of papers filed by the petitioners would show that the respondent herein had filed a suit in O.S.No.129 of 2009 on the file of the Sub-Judge, Arani, to divide the suit property into four equal shares and allot one such share to her. In the said suit after receipt of the summons, the petitioners entered appearance by engaging counsel but, subsequently they did not file written statement and an exparte preliminary decree was passed on 13.07.2012.

8. According to the petitioners, they were waiting that their counsel will inform them for filing written statement but, only after receipt of the notice in the final decree application, they came to know that an exparte decree was passed on 13.07.2012 itself and immediately, they approached their counsel and enquired about the said exparte decree and at that time their counsel informed them that he sent letters but,

unfortunately, the said letters were not received by them. Though the said reason is not an acceptable one, considering the fact that the suit is for partition and valid rights involved in the suit, in order to give one more opportunity to the petitioners, this Court is inclined to allow these Civil Revision Petitions. However, they have to compensate the respondent for the inconvenience caused to her.

9. In the result, each Civil Revision Petition will be allowed on payment of cost of Rs.5,000/- (totally Rs.10,000/-) to the respondent either directly or through her counsel, who appeared before the trial Court within a period of three weeks from the date of receipt of a copy of this order, failing which these petitions shall stand dismissed automatically, without further reference to this Court. If the petitioners comply with the aforesaid condition within the stipulated time, the trial Court has to number the petitions to set aside the ex parte decree and dispose of the same in accordance with law. Consequently, connected Miscellaneous Petition is also closed.

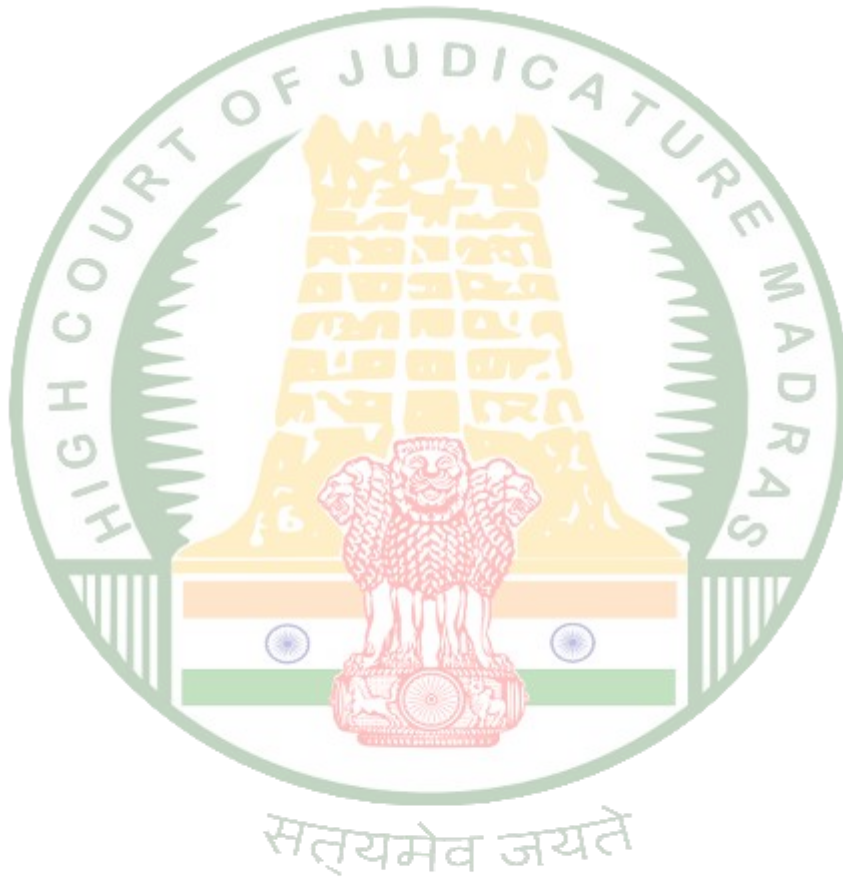
01.12.2020

Internet : Yes/No
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Note: Issue order copy on or before 08.12.2020.

To

The learned Sub-Judge, Arani.



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CRP (NPD).Nos.913 and 1858 of 2015

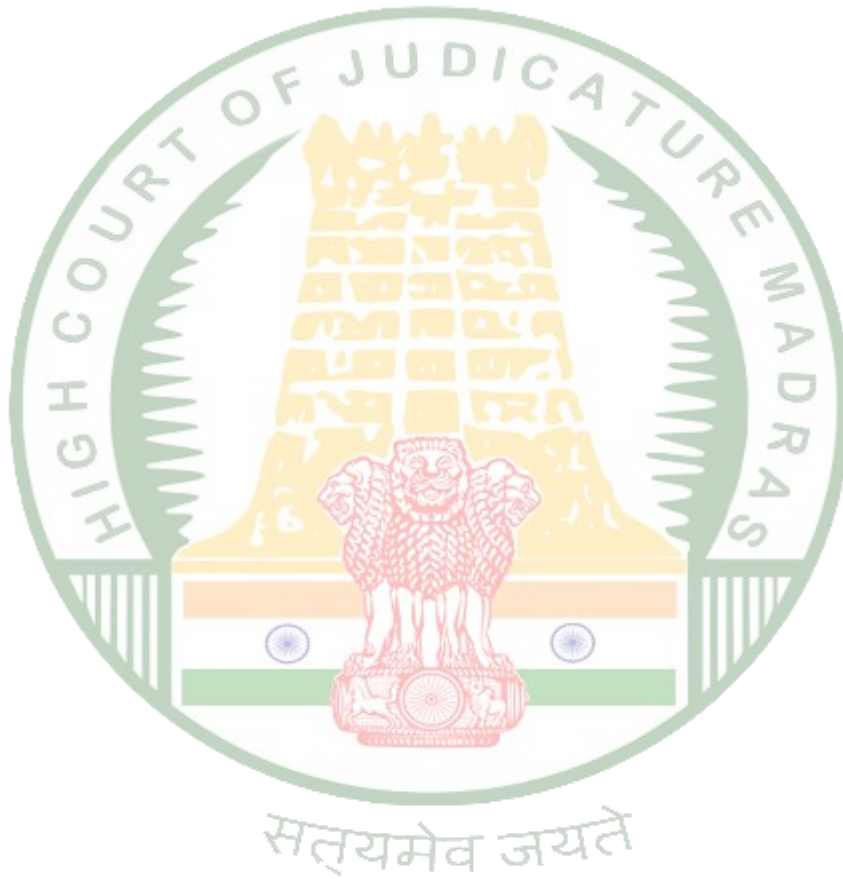
P.RAJAMANICKAM.J.,
dna



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