

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 10.01.2020

JUDGMENT PRONOUNCED ON : 20.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.1873 of 2013
and
M.P.No.1 of 2013

1.Rajeswari
2.David Sundararajan

... Petitioners

...Versus...

1.B.Jeganathan
2.B.Radhika
3.B.Revathi

... Respondents

PRAYER:This Civil Revision Petition has been filed under Article 227 of Constitution of India, against the fair and decreetal order of the Additional District and Sessions Judge (Fast Track Court No.II) at Coimbatore dated 29.11.2011 made in I.A.No.196 of 2011 in O.S.No.12 of 2006.

For Petitioners :: Mr.P.Valliappan

For R1 :: Mr.Ms.Elizabeth Ravi
For Mr.P.Raja

For R2&R3 :: No appearance

J U D G M E N T

The defendants 2 to 3 in the suit are the Revision Petitioners herein.

2. In this revision, they are challenging the order passed in I.A.No.196 of 2011 to condone the delay of 1806 days in filing petition to set aside the exparte decree passed in the suit in O.S.No.12/2006 by the learned Additional District and Sessions Judge (Fast Track Court No.II), Coimbatore, for partition and claiming 1/4th share each in the suit schedule property and to set aside the sale deed executed by the first defendant in the suit in favour of the defendants 2 and 3, which was registered in the office of the fourth defendant.

3. The first defendant remained ex-parte and the defendants 2 to 3 have filed written statement before the Trial Court. However, thereafter none contested the case, which resulted in passing of preliminary decree on 17.03.2008. Thereafter, the defendants 2 and 3 filed an application in I.A.No.196 of 2011, to set aside the ex-parte decree with condonation of delay of 1806 days on the ground that the second petitioner, who is working in Tamil Nadu Hotels, Coimbatore,

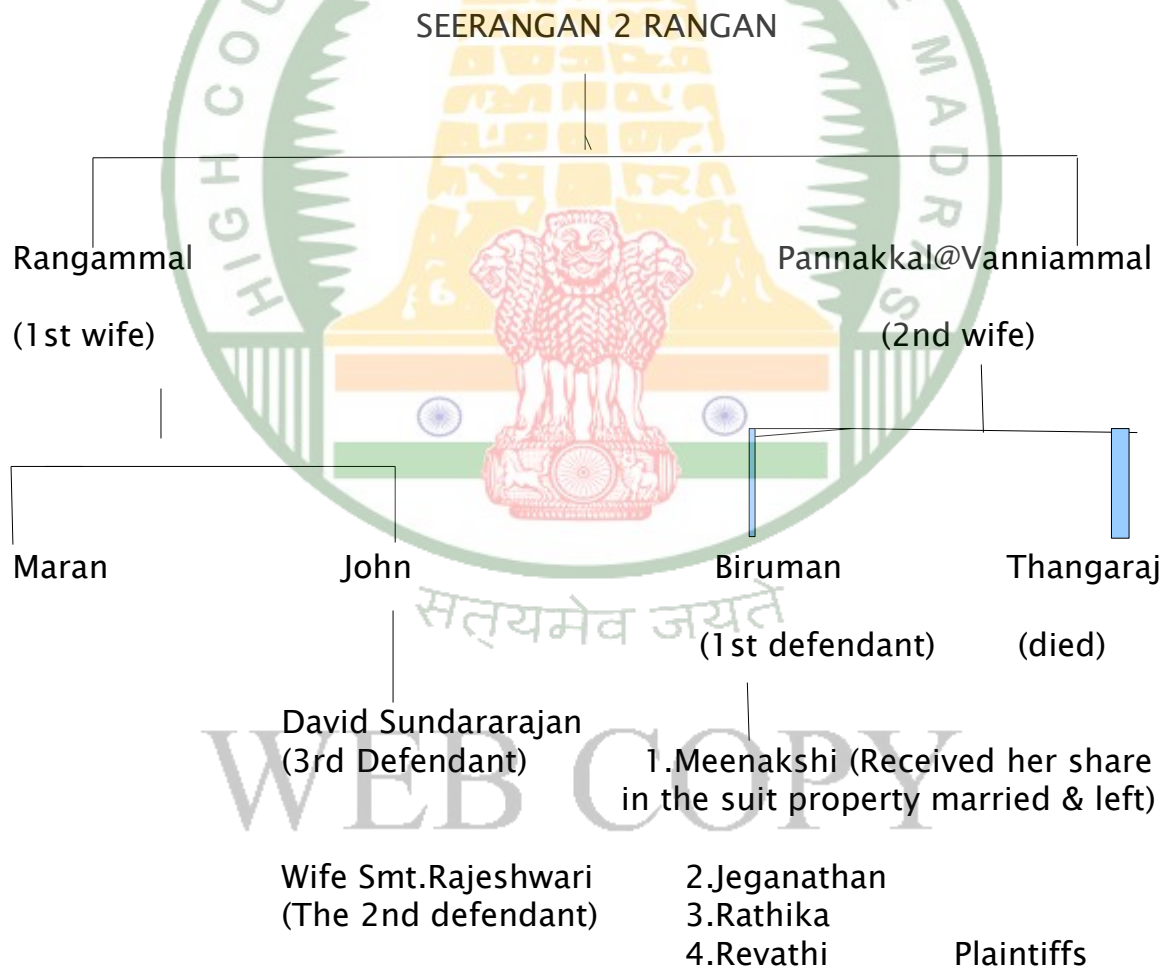
has been transferred from Coimbatore to Ooty and on the first petitioner/wife of the second petitioner therein, suit summons were not served. Furthermore, on the medical ground, the I.A. to condone the delay viz., I.A.196 of 2011 was dismissed on 29.11.2011 and hence, the Civil Revision Petition.

4. The learned counsel for the petitioner would submit that the plaintiffs are none other than the sons and daughters of the first defendant. The first defendant representing the interest of their children viz., sons and daughters, has executed the sale deed in their favour. Now for settling up the sons and daughters, she has filed an application and delay is accepted due to the medical ground.

5. The petitioner filed petition to condone the delay assigning the reason that the first petitioner is a diabetic patient. She has been taken for Kerala for siddha treatment and was hospitalized for sometime. They only came to know about the passing of preliminary decree of partition on the receipt of notice in I.A.No.519/2000 for passing of the final decree.

6. As stated supra, O.S.No.12 of 2006 is filed by the respondent herein who are the sons and daughters of the first defendant–Biruman. The said Biruman–first defendant and the third defendant viz., David Sundararaj are step brothers.

7. In the written statement in the plaint, the family graph is given hereunder:–



8. Thus, Biruman-first defendant is the son of Rangan born to the second wife of Rangan through Vanniammal. While, the third defendant-David Sundararajan is born through John and they are the step brothers and the first defendant has executed a sale deed in favour of the third defendant through some documents on 18.03.2004, 15.07.2004 and 30.03.2005 by force and fraud.

9. It is a specific allegation in the plaint that due to force and fraud committed upon the first defendant namely the father of the plaintiff, he had executed those documents in favour of his step brother by declaring the sale deed dated 03.03.2004 as null and void.

10. Written statement has been filed by the defendants. However, an ex-parte order was passed and followed by ex-parte decree. The learned counsel for the respondent would contend that there is an enormous delay in filing the petition to set aside the ex-parte decree and the reason is not sufficient.

11. After perusing the affidavit and also after going through the records, the third defendant/the second petitioner was on the transferable job and the final decree proceedings are yet to be passed

sale deed is of the year 2004 and the suit has been filed in the year 2006 an opportunity to contest the case has to be given especially when the relationship between the parties are so closed as stated supra. Hence, in order to give an opportunity to all concerns to contest the case on merits and taking note of the reasons assigned in the affidavit, I am inclined to allow this Civil Revision Petition.

12. In the result, this Civil Revision Petition is allowed and the petition to condone the delay in I.A.No.196/2011 is also allowed on payment of cost of Rs.5,000/- to the counsel for the respondents herein within a period of three weeks from the date of receipt of a copy of this order. The Trial Court is directed to take up the petition for setting aside the ex-parte decree and dispose of the same within a period of three months and the Trial Court is directed to complete the trial within a period of four months thereafter. No costs. Consequently, connected M.P is closed.

20.01.2020

nvi

Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

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To

1. The Additional District and Sessions Judge (Fast Track Court No.II) at
Coimbatore

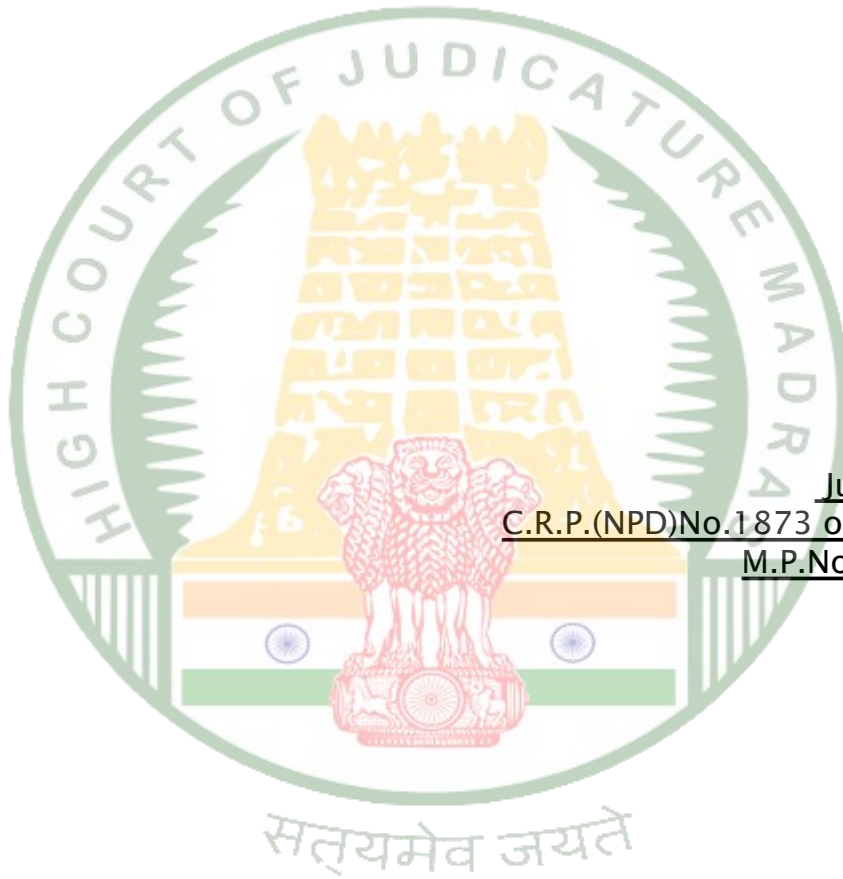


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RMT.TEEKAA RAMAN,J.,

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Judgment in
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