

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP No.1149 of 2020 and
CMP No.6195 of 2020

Senthil Kumar

.. Petitioner / 2nd Defendant

Vs.

Thilagavathy

.. Respondent / Plaintiff

Prayer: This Civil Revision Petition has been filed under Section 115 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.1165 of 2013 dated 18/12/2019 by the Subordinate Judge, Coimbatore.

For Petitioner : Mr.K.Kalimuthu

ORDER

This revision petition has been filed to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.1165 of 2013 by the Subordinate Judge, Coimbatore.

2. The petitioner herein is the 2nd defendant in the above said suit and the respondent herein has filed the suit for partition. In that suit, exparte decree was passed on 02.04.2014 in favour of the respondent/plaintiff. Hence, the petitioner herein has filed a petition in I.A.No.1 of 2019 under Section 5 of the Limitation Act to condone the delay of 1945 days in filing the petition to set aside the exparte decree. That petition was dismissed by the Trial Court on 18.12.2019. Challenging the above said order, the petitioner has fled the present civil revision petition.

3. In the affidavit, the petitioner has stated that due to some urgent work, he had gone to the other State and hence, he was unable to contact his counsel and only on 02.02.2019, while notice was served in the final decree proceedings, he came to know about the exparte decree and in such circumstances, the above said delay of 1945 days has been occurred and therefore, he prayed to condone the above delay.

4. The respondent/plaintiff has resisted the petition

by filing counter affidavit that only to evict the plaintiff from the suit property, the 2nd defendant has acted and hence, the petition has to be dismissed.

5. A perusal of the records shows that the preliminary decree was passed on 02.04.2014 and the plaintiff has filed a final decree petition in I.A.No.1584 of 2018 praying partition the suit property by metes and bounds, as per the preliminary decree, by appointing an advocate commissioner. In that petition, the 2nd defendant/petitioner herein has filed counter affidavit stating that some of the legal heirs have not been impleaded.

6. It is seen from the affidavit filed by the petitioner that, there is no sufficient reason has been stated to condone the inordinate delay of 1945 days in filing the petition to set aside the exparte preliminary decree. The petitioner has not also adduced any oral or documentary evidence to condone the delay.

7. At this juncture, it is relevant to extract the decision rendered by the Honourable Supreme Court in H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and another reported in (2015) 1 SCC 680.

24. ... The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the respondents not deserving any indulgence by the court in the matter of condonation of delay. The respondents had filed the suit for specific performance and when the trial court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered".

8. The Trial Court after considering all the facts and circumstances of the case had come to a conclusion that the petitioner has not made out a case for the inordinate delay of 1945 days in filing the petition to set aside the exparte decree. Hence, this court do not find any illegality or perversity in the orders passed by the Trial court and the same does not warrant any interference by this court.

9. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed. The order passed by the Trial court is upheld.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

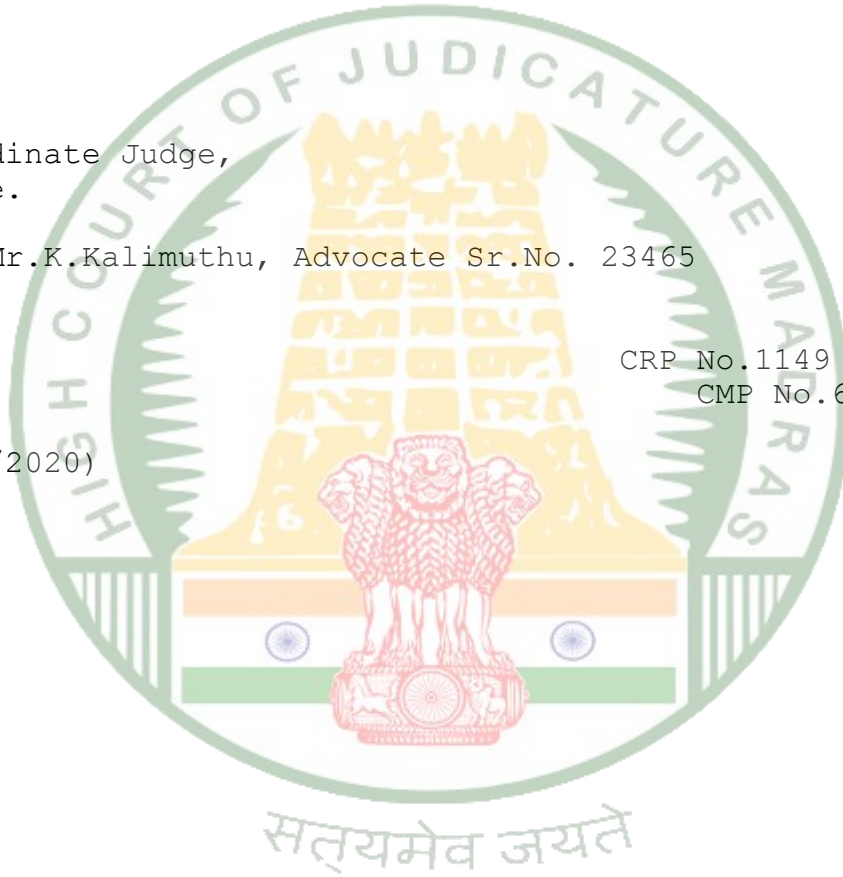
mst

To
The Subordinate Judge,
Coimbatore.

+1 cc to Mr.K.Kalimuthu, Advocate Sr.No. 23465

CRP No.1149 of 2020 and
CMP No.6195 of 2020

MP (CO)
RMP (24/07/2020)



WEB COPY