

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.12.2020

PRONOUNCED ON : 15.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(NPD)No.2753 of 2016

CMP.No.14104 of 2016

(Through Video Conferencing)

1. P.Prasanth
2. P.Palanikumar

Petitioners

Vs

1. C.Krishnaveni
2. The Lakshmi Vilas Bank Limited
represented by its Manager, Vellakovil
Kangeyam, Tiruppur
3. The Patchapalayam Primary Agricultural Cooperative
Bank Limited, Patchapalayam Village
Kangeyam, Tiruppur

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the fair and decreetal order, dated 07.06.2016, made in IA.No.1337 of 2015 in OS.No.267 of 2012, by the District Munsif Court, Kangeyam.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Bharath Kumar

ORDER

1. This Civil Revision Petition has been filed, to set aside the fair and decreetal order, dated 07.06.2016, made in IA.No.1337 of 2015 in OS.No.267 of 2012,

by the District Munsif Court, Kangeyam.

2. The facts of the case, in a nutshell, leading to filing of this Civil Revision Petition are as follows:-

(a) The Defendants 1 and 2 are the Petitioners. The Plaintiff and the Defendants 3 and 4 are the Respondents. The suit was filed for declaration that the registered Will, dated 29.11.1998, executed by Thayammal in favour of the 2nd Defendant with life estate in favour of the 1st Defendant is a created, forged and not binding on the Plaintiff's right over the suit properties and to deliver possession of the suit property. The suit was dismissed for default on 03.03.2015. Hence, the Plaintiff has filed the present IA to condone the delay of 138 days in filing the petition to restore the suit. By the impugned order, the IA was allowed on payment of cost. Hence, this Civil Revision Petition has been filed.

3. This court heard the learned counsel on either side.
4. The learned counsel for the Petitioners has submitted that the Trial Court having rejected the reasons given by the Plaintiff, erroneously allowed the petition to condone the delay in filing the Petition to restore the suit to give one more opportunity in the interest of justice and that the reasons assigned by the Plaintiff are not satisfactory and that no valid reason was assigned by the Trial Court for allowing the IA and hence, this Civil Revision Petition is to be allowed. In support of his contentions, he has relied on the decision of the Honourable Supreme Court reported in **2010 9 SCC 496 (Kranti Associates**

Private Limited Vs. Masood Ahmed Khan).

5. The learned counsel for the Respondents has submitted that since she was suffering from jaundice, she took country treatment and hence, she could not appear on 03.03.2015, on which date, the suit was dismissed for default and that due to her illness, he was not able to proceed with the trial and the delay is neither wanton nor wilful and that unless the suit is restored, she will be put to irreparable loss and injury and the impugned order does not suffer from any infirmity and hence, this Civil Revision Petition is to be dismissed.
6. This Court has given its anxious consideration to the submissions of the learned counsel on either side and also carefully perused the materials placed on record.
7. The reasons assigned for condoning the delay of 138 days by the Plaintiff are that she was suffering from jaundice and she was taking country medicine and hence, she could not proceed with the trial. For jaundice, most of the people would opt to take country treatment. The said reason assigned by the Plaintiff can be accepted as a valid reason.
8. Considering the facts and circumstances of the case, this Court is of the opinion that sufficient cause has been made out by the Plaintiff, which has persuaded the court below to condone the delay in filing the petition. Hence, this Court is of the considered view that in order to give one more opportunity and in the interest of justice, the delay in this case should be condoned.

A.A.NAKKIRAN, J.

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Further, this Court finds no infirmity in the impugned order passed by the court below. Accordingly, this Civil Revision Petition is to be dismissed.

9. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

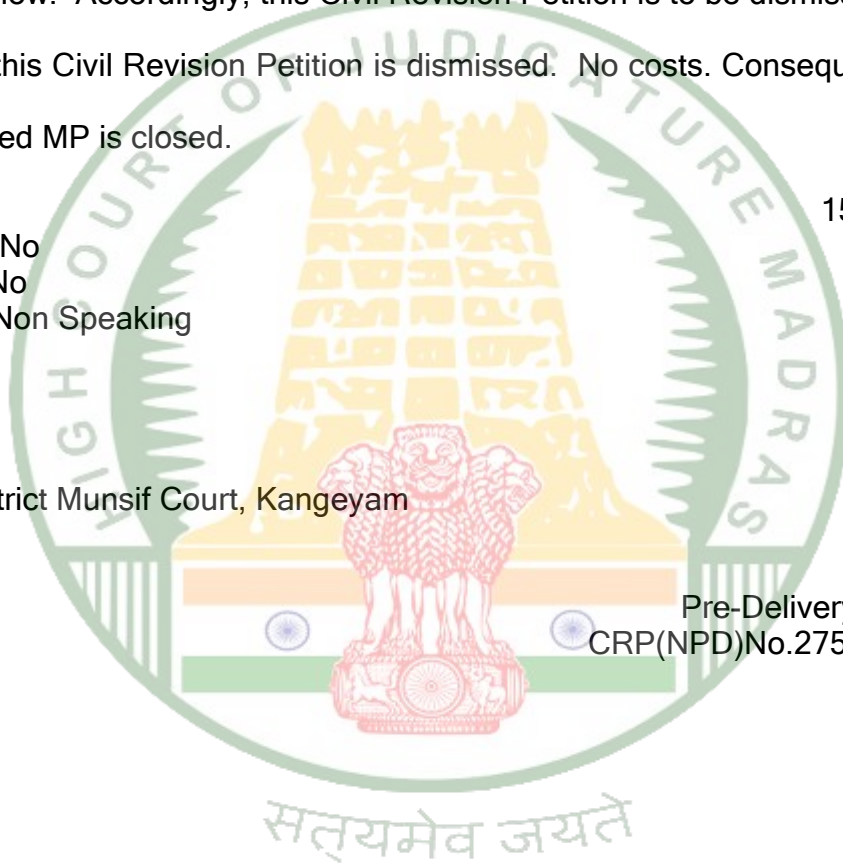
15.12.2020

Index:Yes/No
Web:Yes/No
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To

1. The District Munsif Court, Kangeyam

Pre-Delivery Order in
CRP(NPD)No.2753 of 2016



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