

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2906 of 2018 and
CMP No.16994 of 2018

Vijaya Samundeswari ... Petitioner

Vs

Senthil kumar ... Respondent

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.251 of 2017 in O.S.No.5 of 2015 dated 21.02.2018 by the Principal District and Sessions Judge, Tiruvarur and pleased to dismiss the petition in I.A.No.251 of 2017 in O.S.No.5 of 2015.

For Petitioner : Mr.T.Gowthaman for

Mr.R.S.Sivaram

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ORDER

This revision is at the instance of the plaintiff in O.S.No.5 of 2015, challenging an order of the trial Court condoning the delay of 253

days in seeking to set aside the exparte decree passed in the suit.

2. The suit was laid by the plaintiff for partition claiming that the suit properties belonged to her mother Bhuvaneswari who died intestate on 21.11.2013 and hence she along with the defendants 1 and 2 namely her father and brother would be entitled to a third share in the suit property. The father namely the 1st defendant filed a written statement contending that the suit properties do not absolutely belonged to Bhuvaneswari. Bhuvaneswari has been given only a life estate under the instrument namely family arrangement, dated 04.09.1966 and after the death of her father she took only a life interest and the property was to devolve, on her male heirs after her life time, as per the family arrangement. Citing the instrument namely the family arrangement, the defendants contended that the plaintiff was not entitled to any share. Since the defendant did not appear, an exparte decree came to be passed on 07.12.2016. It is seen that the father namely the 1st defendant had died after the exparte decree. The 2nd defendant filed the instant application for condoning the delay of 253 days in seeking to set aside the exparte decree. According to him, he was employed out side the village and his father was taking care of the suit. While so, his father died

on 12.03.2017, after having suffered illness for a long time. After the death of the father, the 2nd defendant came to know about the exparte decree only after he met the counsel sometime in August 2017. He has also stated that he did not know about the exparte decree as he was working in Thiruppur.

3. This application was resisted by the plaintiff contending that the reasons set out are not sufficient for condonation of delay and the petitioner namely the 2nd defendant was also effectively prosecuting the suit along with his father.

4. The learned trial Judge who heard the application concluded that the 2nd defendant has made out a sufficient cause for condonation of delay. Accepting the reasons assigned, the learned trial Judge allowed the application. It is against the said order, the plaintiff has come up on revision.

5. I have heard Mr.T.Gowthaman, for Mr.R.S.Sivaram learned counsel for the petitioner.

6. Mr.T.Gowthaman, learned counsel appearing for the petitioner would contend that the reasons for the delay are not sufficient to condone the delay of 253 days.

7. I am unable to accept the contentions of the learned counsel for the petitioner. This Court as well as the Hon'ble Supreme Court have repeatedly pointed out that the Courts must be liberal in matters of delay. Here the delay is only 253 days. The reason assigned is the death of the 1st defendant soon after the exparte decree. It is not denied that the 2nd defendant was not living in the said village. Therefore, I am unable to concur with the submissions of the learned counsel that the explanation offered is not satisfactory.

8. I do not find any illegality or irregularity in the order of the trial Court where it accepts the reasons given by the petitioner. The Civil Revision therefore fails and it is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking order / Non speaking order

To

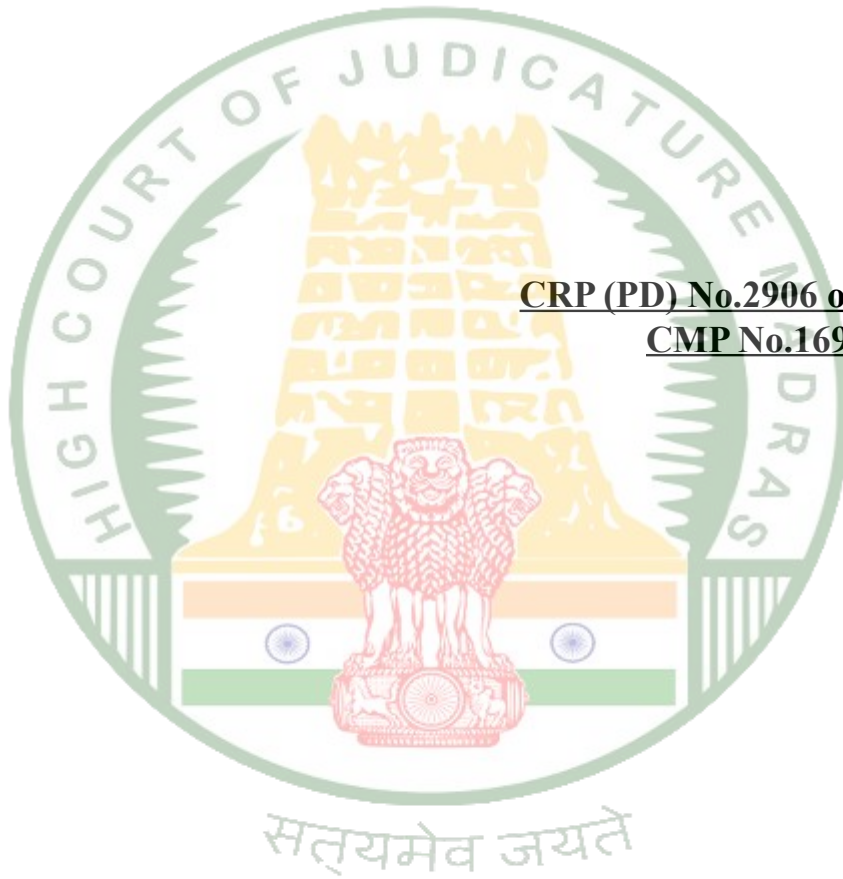
The Principal District and Sessions Judge, Tiruvarur

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