

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP(NPD).No.765 of 2014
and
M.P.No.1 of 2014

Dhamodharan ...Petitioner/ 1st Defendant

Vs.

1.Vijaya

2.Lalitha

3.Brindha

...Respondents 1 to 3/
Defendants 2 to 3

4.Narasimmalu

... 4th Respondent/
Plaintiff

PRAYER: This Civil Revision Petition has been filed under Section 115 of CPC to set aside the order dated 20.12.2013, passed in I.A.No.138 of 2010, in O.S.No.59 of 2003, on the file of Subordinate Court, Panruuti and to allow the condone delay petition and to restore suit in O.S.No.59 of 2003.

For Petitioner : Mr.K.Moorthy
For R1 to R3 : No appearance
For R4 : M/s.Usha Raman

ORDER

The Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Panruuti, in I.A.No.138 of

2010, in O.S.No.59 of 2003, dated 20.12.2013 and to allow the condone delay petition and to restore suit in O.S.No.59 of 2003.

2 First defendant in the suit O.S.No.59 of 2003 is the revision petitioner.

3 Brief facts of the case are as follows:

(i) The fourth respondent herein has filed a suit in O.S.No.59 of 2003, before the learned Subordinate Judge, Panruti, for partition. As the written statement was not filed by the defendants, despite several adjournments were given to the defendants, they were set ex-parte. Subsequently, ex-parte preliminary decree was passed on 09.07.2004. Thereafter, the defendants have filed a petition on 19.08.2004 to set aside the ex-parte decree passed against them. But, those petitions were returned on 20.08.2004 to rectify the defects.

(ii) Thereafter, the fourth respondent/plaintiff has filed an application in I.A.No.227 of 2005 for passing of the final decree, wherein, summons were served and an Advocate Commissioner was appointed for division of the property and final decree was passed on 27.10.2006. After passing of the final decree, the fourth

respondent/plaintiff has filed an execution petition in EP.No.38 of 2009, before the learned Subordinate Judge, Panruti, for execution of the final decree proceedings. Thereafter revision petitioner/first defendant has filed an execution application in EA.No.1 of 2014 to stay the further executing proceedings for a period four months in the said EP.No.38 of 2008 and also represented the application and the said E.A.No.1 of 2014 was dismissed.

(iii) Thereafter, the defendants have filed an application in I.A.No.138 of 2010 before the learned Subordinate Judge, Panruti, along with an application under Section 5 of the Limitation Act, to condone the delay of 2003 days for representing the returned petitions under Section 5 of the Limitation Act and Order 9 Rule 13 of CPC. The said IA.No.138 of 2010 was dismissed. As against the same, the revision petitioner has preferred this Civil Revision Petition before this Court.

4 Heard the learned counsel for the petitioner and the learned counsel for the fourth respondent and perused the materials placed on record.

5 As submitted by the learned counsel for the revision

petitioner that the revision petitioner/first defendant was set ex-parte and preliminary ex-parte decree was passed on 09.07.2004 and hence, he has filed an interlocutory application under Order 9 Rule 13 of CPC and Section 5 of the Limitation Act, to set aside ex-parte with a delay of 40 days since, the said application was filed on 19.08.2014 returned on 20.08.2004 for certain defects and also computation of dates, the same was not represented and it was represented after a delay 2003 days in I.A.No.138 of 2010 and the same was dismissed by the learned Subordinate Judge, Panruti.

6 On going through the affidavit filed in support thereof, this Court does not find any justifiable reason except making allegation against Office of the Advocate engaged by the party. Admittedly, revision petitioner was also served in final decree proceedings, he was kept quite all along with. Preliminary decree is of the year 2004 and the revision petitioner was served on the final decree proceedings in the year 2006 and final decree proceedings has also been completed and the execution proceedings that was completed on 2009.

7 Hence, I find that there is a deliberate in action on the part of the petitioner in defending the suit and he cannot blame

advocate office for non representation of the petition that too for the delay 2003 days. Besides from the perusal of the records, he is not diligent in continuing the case in fact it appears to be deliberate. In this view of the matter, I am not inclined to allow this Civil Revision Petition.

8 In the result, the Civil Revision Petition stands dismissed and the order passed in I.A.No.138 of 2010 in O.S.No.59 of 2003, by the learned Subordinate Judge, Panruti, dated 20.12.2013, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.02.2020

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Speaking Order:Yes/No

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To

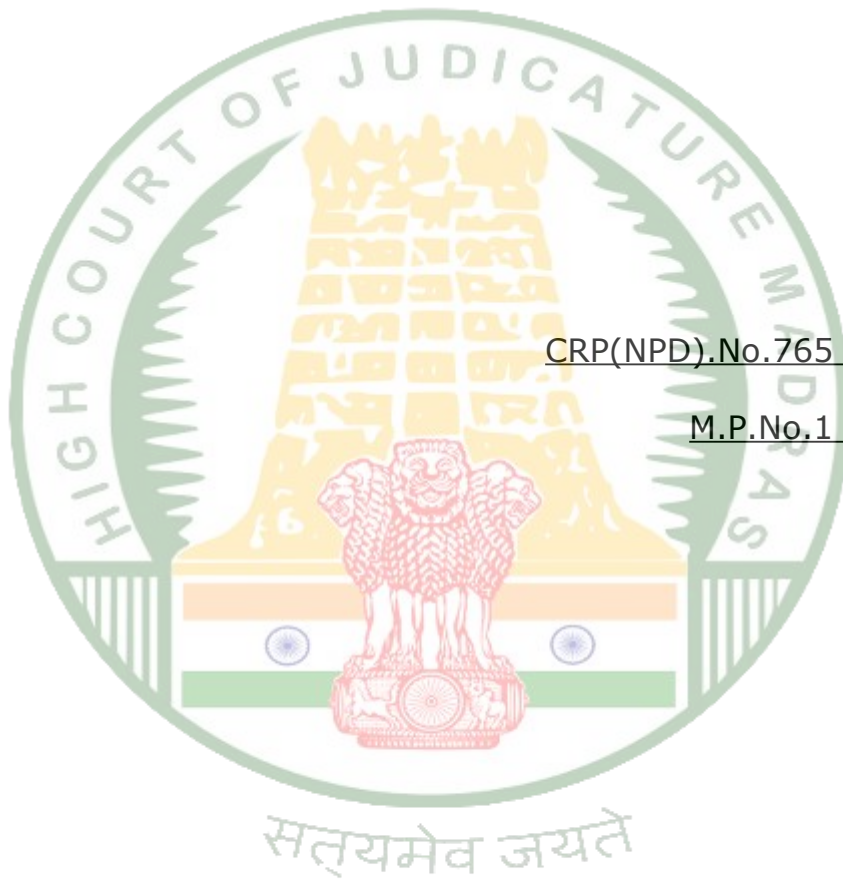
Subordinate Judge, Panruti.

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RMT.TEEKAA RAMAN., J.

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