

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.11.2020

Delivered on: 10.12.2020

CORAM

THE HONOURABLE Mr. JUSTICE P.RAJAMANICKAM

CRP(NPD).No.775 of 2014

Boothammal

... Petitioner

Vs.

1.T.Venkatesan
2.Baby
3.Lakshmi
Kandasamy (Deceased)
4.Sarasu
5.Murugesan
6.Chitra
7.Bothamal
8.Mani
9.P.Kandasamy
10.K.Periyasamy

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code to set aside the order passed in I.A.No.267 of 2012 in O.S.No.130 of 2010 dated 23.08.2013 on the file of the learned Sub Court Sankari.

For Petitioner : M/s.M.Devaraj

For Respondents : Mr.T.L.Thirumalaisamy

for R9 and R10

Respondents 1 to 8 No appearance

ORDER

This Civil Revision has been filed by the petitioner/plaintiff against the dismissal of her application in I.A.No.267 of 2012 in O.S.No.130 of 2010 on the file of the Sub Court, Sankari, dated 23.08.2013.

2.The petitioner herein had filed an application in I.A.No.267 of 2012 in O.S.No.130 of 2010 on the file of the Sub Court, Sankari under Section 5 of the Limitation Act to condone the delay of 260 days in filing a petition to restore the suit, which was dismissed for default on 19.07.2011. The learned Sub Judge, by an order dated 23.08.2013, had dismissed the said Application. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3.Heard Mr.M.Devaraj, learned counsel for the petitioner and Mr.Thirumalaisamy, learned counsel for the respondents 9 and 10.

4.The learned counsel for the petitioner has submitted that, the petitioner had filed a suit in O.S.No.130 of 2010 on the file of the Sub Judge, Sankari to re-open the partition and divide the suit properties as per the Hindu Succession Act, 1956 and consequently set aside the sale deed dated 23.12.2009. He further submitted that, the learned Sub Judge, Sankari had dismissed the said suit for default on 19.07.2011, by holding that, the petitioner did not pay batta for sending Summons to the 2nd defendant and also did not take steps to bring the legal representative of the 4th defendant, in time. He further submitted that, on 28.03.2011 itself, the petitioner had filed an Application to bring the legal representatives of the 4th defendant on record along with the petition to condone the delay in filing the said petition. But the said Petitions were returned stating that, notice to other side was not given. He further submitted that, since the 4th defendant died, notice to his legal heirs have to be sent only through Court, but, without considering the same, the Trial Court had returned the said petitions. He

further submitted that, if steps are not taken against the 2nd and 4th defendants, the Trial Court ought to have dismissed the suit against them alone, but, instead of that it had dismissed the entire suit. He further submitted that with regard to the dismissal of the said suit, the petitioner's Advocate had informed the same to the petitioner and since the petitioner was bed ridden, she could not file a petition to restore the suit in time and after recovering from the illness, she filed a petition to restore the suit with a petition to condone the delay of 260 days along with Doctor's Certificate, but, the Trial Court, without considering the said facts, had dismissed the said Application. He further submitted that since the petitioner had filed the above suit for partition, her rights were closed by dismissing the application filed by her to condone the delay in filing the restoration petition and hence, he prayed to give a chance to the petitioner to prosecute the aforesaid suit and therefore, he prayed to allow the Civil Revision Petition and set aside the order passed by the Trial Court and allow the Application in I.A.No.267 of 2012.

5.Per contra, the learned counsel for the respondents 9 and 10 has submitted that the petitioner had filed the suit for partition stating that, she is entitled to a share in the suit property by virtue of Hindu Succession (Amendment) Act, 2005. He further submitted that as per sub- Section 5 of Section 6 of the Hindu Succession Act, 1956, daughters cannot reopen the partition, which has been effected before the 20th day of December 2004. He further submitted that in this case, the petitioner in her plaint had admitted that, the partition was took place on 09.09.1992 itself and as such, the petitioner cannot seek partition by invoking Section 6 of the Hindu Succession Act, 1956 as amended by Hindu Succession (Amendment) Act, 2005. He further submitted that the petitioner had filed a frivolous and vexatious suit, and hence she has not paid batta to serve summons to the 2nd defendant from 07.12.2010 onwards. Further, she has not taken steps to implead the legal heirs of the 4th defendant in time and consequently, the suit against the 4th defendant abated automatically. He further submitted that since the suit was dismissed against the 2nd defendant for not paying batta and against the 4th defendant for not taking steps to bring legal heirs in

time, the suit against the other defendant also is liable to be dismissed. He further submitted that the petitioner has not stated any reason in her Affidavit for condoning the delay of 260 days in filing a Petition to restore the suit. He further submitted that, she has simply stated that she was bed ridden, but, she has not stated what was her ailment and taking into consideration the aforesaid facts, the Trial Court had rightly dismissed the said Application and in the said order this Court need not interfere and therefore, he prayed to dismissed this Civil Revision Petition.

6.A perusal of the typed set of papers filed by the petitioner shows that she filed a suit in O.S.No.130 of 2010 on the file of the Sub Judge, Sankari to re-open the partition which was effected under a registered partition deed dated 09.09.1992. In the affidavit filed in support of the Application in I.A.No.267 of 2012, the petitioner has stated that the aforesaid suit was pending from 07.12.2010 for payment of batta for sending Summons to the 2nd defendant and also for taking steps to bring on record the legal representatives of 4th defendant. If the petitioner fails to take steps to bring the legal representatives of the 4th defendant within 90

days from the date of death, automatically the suit will be abated against him and no formal order is required to be passed, as the suit is abated against the 4th defendant. Since the aforesaid suit is filed for partition, if the suit is dismissed against one of the defendants, the entire suit has to be dismissed on the ground that, necessary parties were not added. Therefore, the contention of the petitioner that, the Trial Court should not have dismissed the entire suit cannot be accepted.

7.In the affidavit filed in I.A.No.267 of 2012 the petitioner has simply stated that she was bed ridden, but, she has not stated what is her ailment. Further, she has not stated from which date she was bed ridden and when she recovered from her illness. Taking into consideration the aforesaid facts, the trial Court had dismissed the application as the Petitioner has not assigned any valid reason to condone the delay of 260 days in filing the petition to restore the suit. Taking into consideration, this Court does not find any infirmity in the said order and hence this Civil Revision Petition is liable to be dismissed.

8.In the result, this Civil Revision Petition is dismissed. No costs.

10.12.2020

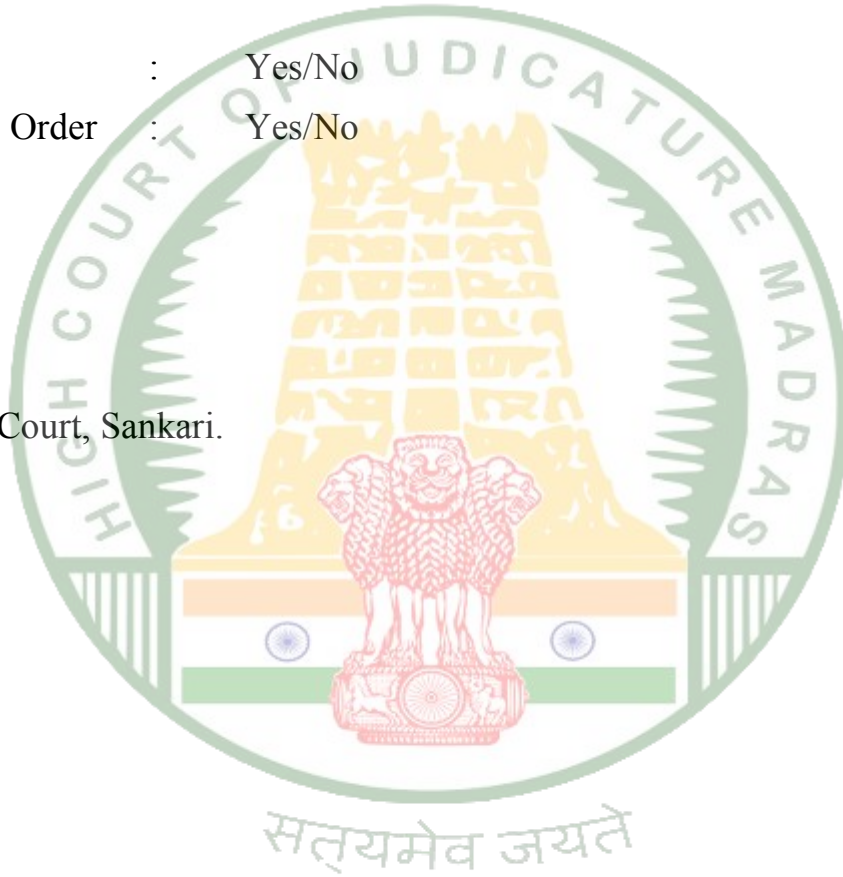
Index : Yes/No

Speaking Order : Yes/No

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To:

The Sub Court, Sankari.



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P.RAJAMANICKAM, J.

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**Pre-Delivery Order in
CRP(NPD).No.775 of 2014**

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