

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

**C.R.P.(P.D).No.4124 of 2019
and C.M.P.No.26884 of 2019**

- 1.Unnamalai
- 2.Balambal
- 3.Chinnammal
- 4.Kuppusami
- 5.Nagaraj
- 6.Arumugam

...Petitioners

Vs.

- 1.Rajamani
- 2.Mohanraj
- 3.Mallika
- 4.Sasikala
- 5.Jayalakshmi
- 6.Murugan
- 7.Lakshmanan
- 8.Valarmathi
- 9.Arumugam
- 10.Dhanalakshmi
- 11.Arunkumar
- 12.Malathi
- 13.Vennila
- 14.Nathiya
- 15.Alamelu
- 16.Durgadevi
- 17.Indirani

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the Order and Decreetal order in I.A.No.341 of 2018 in O.S.No.211 of 2012, on the file of the Principal District Judge, Villupuram dated 19.08.2019.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.N.Suresh for RR 1 to 9 and
RR 12 to 17
No appearance for R10 & R11

ORDER

This Petition has been filed against the Order and Decreetal order in I.A.No.341 of 2018 in O.S.No.211 of 2012, on the file of the Principal District Judge, Villupuram dated 19.08.2019.

2.The suit in O.S.No.211 of 2012 is filed by the respondents herein for the relief of partition.

3.Pending suit, the petitioners herein has filed the I.A.No.341 of 2018, to condone the delay of 723 days in filing the Order 9 Rule 13 of CPC petition.

4.After hearing both sides elaborately, the learned trial Judge, dismissed the I.A. with costs in I.A.No.341 of 2018 by order dated

19.08.2019.

5. Against the order made in I.A.No.341 of 2018 dated 19.08.2019, the petitioners are before this Court with a prayer to set aside the order of the trial Court.

6. The learned counsel for the petitioner submitted that the respondents/plaintiffs filed the suit for partition and claimed 1/5th share in the suit property. The revision petitioners/defendants are also having share in the suit property. In the suit, the petitioners/defendants 1 to 4, 9 & 10 are remained exparte. So that an exparte decree was passed on 26.10.2016. There is a delay of 723 days in filing the application to set aside the exparte decree. Reason for the delay is stated that due to their age and ill health, they have not approached their Advocate and the Court. The trial Court dismissed the petition on the ground that the defendants 12 and 13 appeared through the Court guardian. They contested the suit. Therefore, the suit was partly decreed on 26.10.2016 and final decree petition was filed on 21.03.2018 and it is numbered as I.A.No.61 of 2018. In that final decree petition also, these petitioners were remained exparte and in final decree petition, exparte order was made on 22.10.2018. In the I.A.No.341 of 2018,

the trial Court found that the reason for delay has not been properly explained and in order to substantiate the delay of 723 days in filing the appeal, has not been supported with valid documents and thus dismissed the application on 19.08.2019. The learned counsel for the petitioners/defendants further submitted that the order of the trial Court is unjust on the ground that the petitioners are being the share holders and also one person has passed away, having the chance of enhanced share, apart from the 1/5th share as stated by the petitioners. Hence he pleaded to allow the revision petition.

7.The learned counsel for the respondents/plaintiffs supported the order of the trial Court and further submitted that the defendants also entitled for 1/5th share in the suit property and they can very well participate in the final hearing proceedings and thus pleaded to dismiss the revision petition.

8.I have considered the arguments advanced by the learned counsel on either side and perused the materials available on record.

9.The plaintiffs filed the suit in O.S.No.211 of 2012, claimed 1/5th share in the suit A schedule property. There are 15 defendants in the

suit, except 12th and 13th defendants, who were represented by the 14th defendant, all were remained exparte and preliminary exparte order was passed on 26.10.2016. Based on that exparte decree, application in I.A.No.60 of 2018 is also filed. After that the petitioners filed this petition in I.A.No.341 of 2018 with a delay of 723 days. Admittedly, there is a delay in approaching the Court. But it has to be considered that the defendants are also entitled to get a share in the suit property. According to the defendants, the proposed share of 1/5th share is enlarged due to the death of one person. In order to give a complete adjudication a chance has to be given to the petitioners/defendants to participate in the proceedings.

10.It is well settled that sufficient cause in each case is a question of fact. Sufficient cause has got to be construed with regard to the fact and circumstances of each case and liberally. This is the case of partition suit. The share of the parties has to be rightly adjudicated for complete adjudication purpose. Further the petitioners herein are to be allowed to participate in the proceedings, where non appearance of the petitioners were neither malafide nor intentional. Cause should be sufficient. Therefore, the claim of the petitioners that because of their age and health reason, they

could not approach their Advocate to file the petition on time and it has to be accepted. The trial Court failed to consider the age of the petitioners and their health ground, dismissed the petition.

11.The order of the trial Court is unsustainable and Therefore, I set aside the order passed by the trial Court made in I.A.No.341 of 2018 in O.S.No.211 of 2012, on the file of the Principal District Judge, Villupuram dated 19.08.2019.

12.In the result, the Civil Revision Petition is allowed, with cost of Rs.5000/- (Rupees Five Thousand Only) payable by the petitioners herein to the respondents, within one month, from the date of receipt of a copy of this order. Consequently connected miscellaneous petition is closed.

14.12.2020

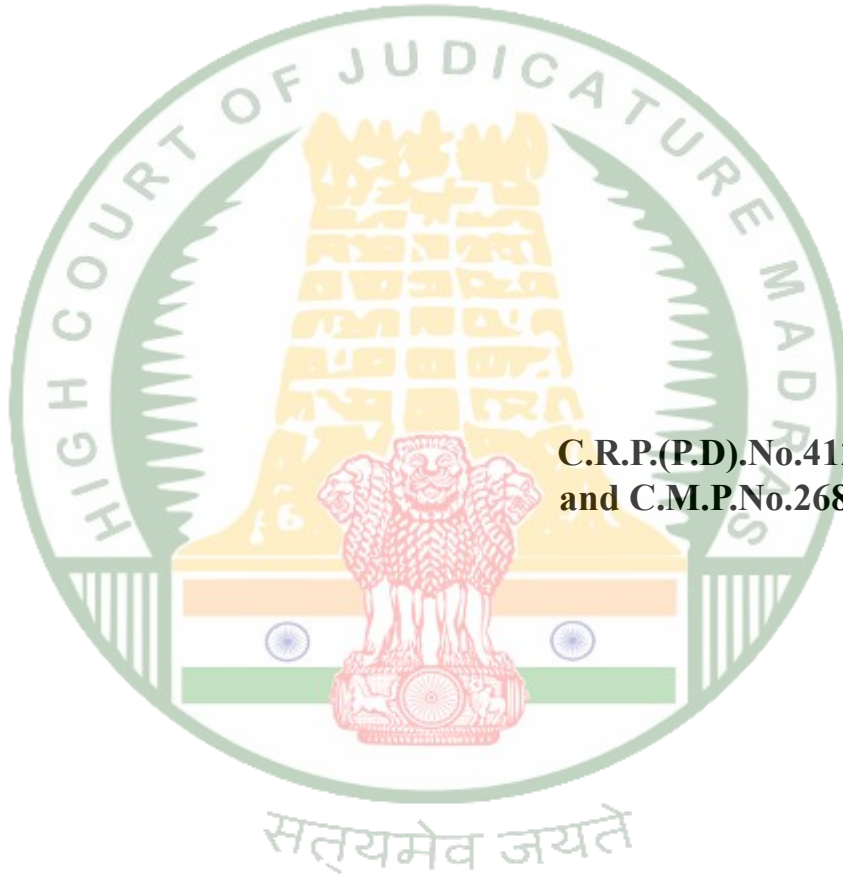
Index:Yes/No
Speaking Order: Yes/No
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To
The Principal District Judge, Villupuram.

C.R.P.(P.D).No.4124 of 2019

V.SIVAGNANAM.J,

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