

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.3920 of 2018

1. Ashrab Ali (Died)
2. Ansiya Banu
3. Sabura Nasrin
4. Mohamed Yasir

... Petitioners

Vs.

Virudhachalam Municipality,
Rep. by its
Commissioner,
having office at
Ayyaanar Koil Street,
Kaspa Virudhachalam,
Cuddalore District – 606 001.

... Respondents

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 13.08.2018 passed in I.A.No.627 of 2017 in O.S.No.599 of 2006 on the file of the Principal District Munsif Court at Virudhachalam.

For Petitioners : Mr.G.Anabayachozhan

For Respondent : Mr.R.P.Prathap Singh

ORDER

The legal representatives of the plaintiff in O.S.No.599 of 2006 have come up with this Civil Revision Petition, challenging an order dismissing an application for condonation of delay of 1078 days seeking to set aside the abatement caused by the death of the sole Plaintiff.

2. The suit was laid by the plaintiff for declaration of his title to the suit B Schedule properties and for a permanent injunction. Pending suit, the plaintiff died and the suit came to be dismissed for non impleading of legal representatives on 20.10.2014. The petitioners who are his legal representatives have come up with this application. The son namely the 4th petitioner has filed an affidavit in support of this application. He has stated that his mother/the 1st petitioner is unwell and she is on bed rest. The 2nd petitioner, daughter of the original plaintiff Ashrab Ali, is married and she is residing with her husband and he happens to be staying outside Virudhachalam for pursuing his education. It is also stated that their counsel Mr.Ramu also died in 2015. Therefore, they were totally ignorant about the dismissal of the suit. Only recently, they came to know about the suit having

been dismissed and hence they have come up with this application for condonation of delay.

3. This application was resisted by the Municipality contending that the reasons assigned are not true. It was contended that the 1st petitioner and his mother are residing only in Virudhachalam.

4. The trial Court upon a consideration of the facts and circumstances of the case concluded that the petitioners have not assigned sufficient cause for condonation of delay in setting aside the abatement. On the said finding, the learned trial Judge dismissed the application. Aggrieved, the petitioners are on revision.

5. I have heard Mr.G.Anabayachozhan, learned counsel appearing for the petitioners and Mr.R.P.Prathap Singh, learned counsel appearing for the respondent.

6. No doubt, the delay is huge. But the delay is only in seeking to set aside the abatement. The plaintiff in the suit had died, his counsel also died in 2015 and the suit was dismissed as abated only in October 2014. There is nothing to disbelieve the claim of the petitioners that the 1st petitioner was sick, the 2nd petitioner is married and she is residing with her husband, the 3rd petitioner is pursuing education outside Virudhachalam.

7. This Court has always adopted a very liberal approach in condoning the delay particularly in matters of abatement. The fact that the legal heirs were aware of the pendency of the suit itself has not been brought out. Therefore, I do not think that the trial Court was justified in dismissing the application seeking to condone of delay in setting aside the abatement. I am of the considered opinion that the petitioners should be given a chance to prosecute the suit on merits.

8. In view of the above, this Civil Revision petition is allowed and the application in I.A.No.627 of 2017 in O.S.No.599 of 2006 on the file of the Principal District Munsif Court at Virudhachalam will stand allowed.

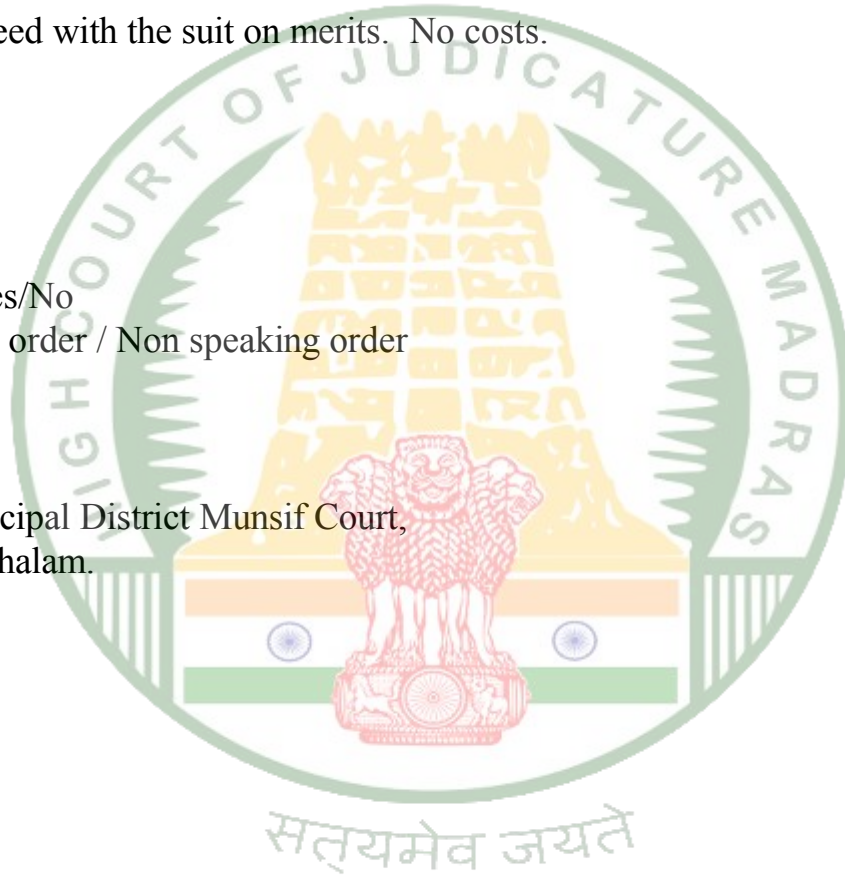
The delay of 1078 days in setting aside the abatement is condoned. The trial Court namely the Principal District Munsif Court at Virudhachalam is directed to number the application to set aside the abatement and to bring on record the legal representatives, dispose of the same in accordance with law and proceed with the suit on merits. No costs.

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Index: Yes/No
Speaking order / Non speaking order

To

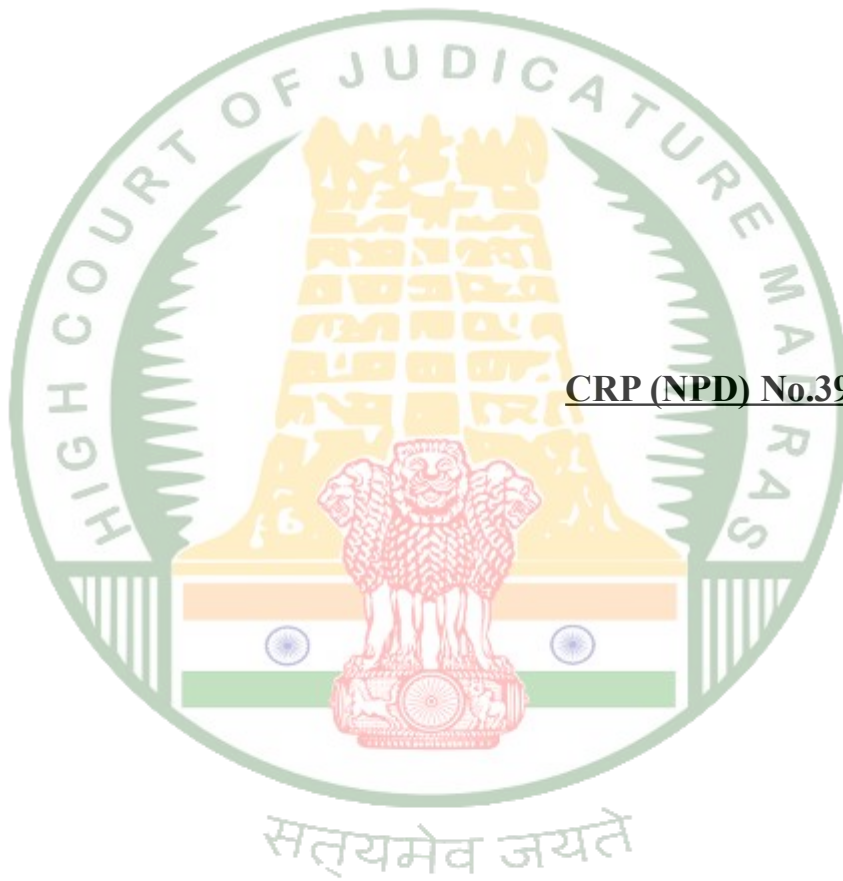
The Principal District Munsif Court,
Virudhachalam.



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R.SUBRAMANIAN, J.

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