

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No. 3902 of 2018

and

C.M.P.No. 21675 of 2018

1.M.Dhanraj
2.S.Rajendran
3.A.Chellamuthu
4.R.Govindaraji

...Petitioners

Vs.

1.Chinnaponnu
2.Marakkal

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 20.06.2016 passed in I.A.No. 231 of 2014 in O.S.No. 70 of 2012 by the II – Additional District and Sessions Court, Salem.

For Petitioners : Mr.C.D.Sugumar

For Respondents : Mr.R.Nalliyappan

ORDER

The defendants 4 to 7 in O.S.No. 70 of 2012, a suit for partition, have come up with this revision, challenging the order refusing to condone

the delay of 265 days in filing an application to set aside the exparte decree.

2. The suit in O.S.No. 70 of 2012 was decreed exparte on 30.09.2013. An application was filed by the petitioners on 23.07.2014 seeking condonation of delay of 265 days in filing a petition to set aside the exparte decree. The reason assigned for the delay is that the 1st petitioner namely, 4th defendant, M.Dhanraj, who was looking after the suit on behalf of those who are all purchasers of the property from the other defendants in the suit was bed ridden due to jaundice from March 2013 and therefore, he could not meet his counsel. It is also claimed only when the notice in the final decree proceedings was served, they came to know that there was an exparte decree. On the above reasons, the petitioners sought for condonation of delay.

3. This application was resisted by the respondents / plaintiffs contending that the reasons are not sufficient for condonation of delay and the exparte decree came to be passed as early as on 30.09.2013, since the defendants did not even file a written statement. The Trial Court, upon consideration of the facts and circumstances concluded that the delay has

not been properly explained and dismissed the application. Hence, the revision.

4. I have heard Mr.C.D.Sugumar, learned counsel for the petitioners and Mr. R.Nalliyappan, learned counsel for the respondents.

5. Mr.C.D.Sugumar, learned counsel for the petitioner would contend that the Trial Court was not right in dismissing the application without affording an opportunity to the petitioner to contest the suit. He would also contend that the petitioners being purchasers from the other defendants were left at the mercy of the other defendants. It is also seen that the other defendants namely, defendants 1 to 3 have also remained exparte. There is no reason to doubt the reasons assigned in the affidavit filed in support of the application. It is seen that the suit is one for partition, which has been filed after the sale of the properties by the defendants 1 to 3 to the defendants 4 to 7. Substantial rights to property is involved in the suit. Therefore, in the absence of any negligence or any indifference on part of the petitioners, normally, the delay should be condoned allowing the

petitioners to contest the suit on merits. The Trial Court had taken a very strict view of the delay and had held that there is no sufficient cause. The fact that the first petitioner, who is the deponent to the affidavit has suffered from jaundice is not denied in the counter affidavit. The learned trial judge has concluded that even if the reason is true, it won't be a sufficient cause for condonation of delay. I do not think, the learned District Judge was right in adopting such a strict view in matters of condonation of delay particularly, in a suit for partition where the petitioners are third party purchasers. I am of the opinion, the petitioners deserve a chance to contest the suit. Therefore, this civil revision petition is allowed, I.A.No. 231 of 2014 will stand allowed, the delay of 265 days in seeking to set aside the exparte decree is condoned. No costs.

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24.08.2020

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To:-

The II – Additional District and Sessions Court,
Salem.

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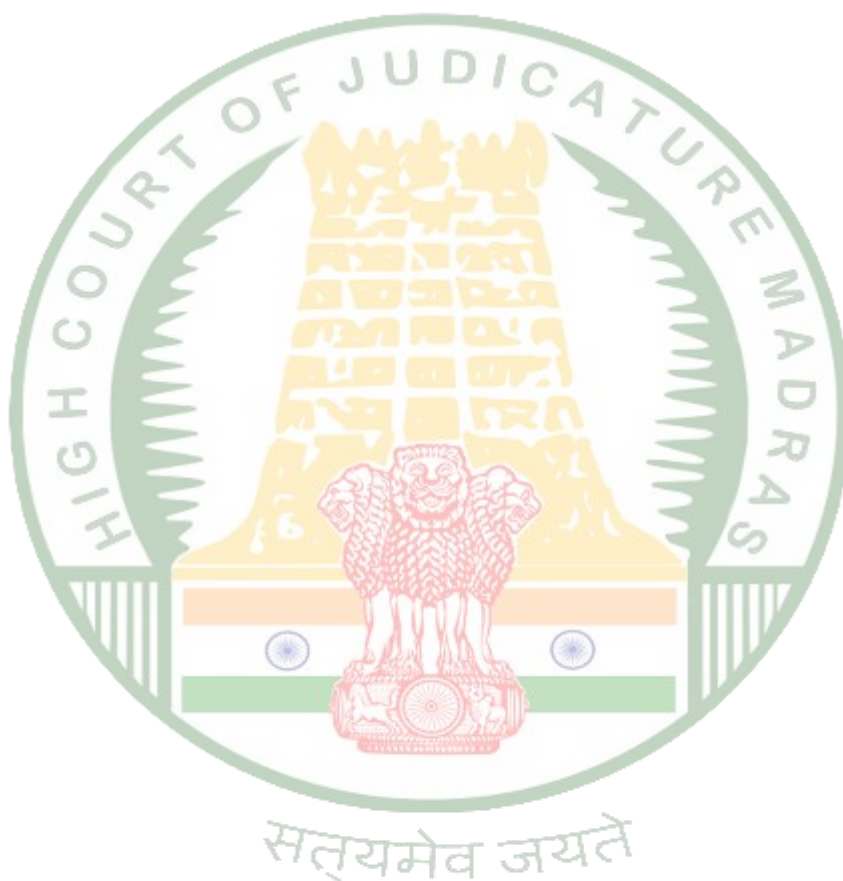
R.SUBRAMANIAN, J.
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