

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No.4209 of 2018 and
CMP No.23134 of 2018

K.Subbathal (Died)

1. K.Subramaniam

2. K.Santhalingam

.. Petitioners

Vs.

K.Ruckmani

... Respondent

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 27.03.2018 passed by the I Additional Subordinate Court at Coimbatore in I.A.No.511 of 2014 in O.S.No.170 of 2011.

For Petitioners : Mr.T.Saikrishnan

For Respondent : Mr.M.Ashwin Kumar
for M/s.Sarvabhauman Associates

ORDER

This Civil Revision Petition has been filed by the defendants in O.S.No.170 of 2011, challenging the dismissal of their application to

condone the delay of 1207 days in filing an application to set aside the *ex-parte* decree made in the said suit.

2. The suit was filed by the respondent/plaintiff seeking partition and separate possession of her 1/4th share. In the plaint she had alleged that the suit properties are ancestral and self acquired properties of her father Kali Gounder, who admittedly died in the year 1993. The plaintiff was married in the year 1979. The defendants remained *ex-parte* and the suit was decreed as prayed by a cryptic four line judgment. There was no finding on the character of the properties. Also there was no finding on the entitlement of the plaintiff to equal share in as much as she herself conceded that some of the properties were ancestral properties. The Trial Court did not discuss the evidence of the plaintiff also. Since the plaintiff was married prior to the year 1989, she would not be entitled to the benefits of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, which came into force with effect from 20.03.1989. The plaintiff cannot also invoke the benefits of Hindu Succession (Amendment) Act (39 of 2005), since her father died even prior to the Act came into force.

3. Be that as it may. The defendants came out with an application

to set aside the *ex-parte* decree after a delay of 1207 days. According to the second defendant, who filed an affidavit in support of this application, the delay occurred due to the fact that he was away from India to accompany his daughter, who was pregnant, between 21.07.2012 to 13.07.2013. It is also stated that he had a neurological problem and he underwent Ayurvedic treatment for the same. He has also alleged that his mother was unwell and he had to take care of her also.

4. The respondent/plaintiff resisted the said application contending that the reason given for condonation of delay are insufficient. It is also claimed that the defendants are trying to protract the proceedings. The Trial Court had dismissed the application on the ground that the reasons assigned are insufficient to condone such undue delay of 1207 days.

5. I heard Mr.T.Saikrishnan, learned counsel appearing for the petitioners and Mr.M.Ashwin Kumar for M/s.Sarvabhauman Associates, learned counsel appearing for the respondent.

6. The suit is one for partition. The plaintiff has very clearly averred and plaint that the properties are ancestral and self acquired properties of her father Kali Goundar, who died in the year 1993. As already

pointed out that the plaintiff cannot claim to be a coparcener either under Hindu Succession (Amendment) Act (1 of 1990), or under the Hindu Succession (Amendment) Act (39 of 2005). The Trial Court has not adverted to any of these facts and has passed the *ex-parte* decree. No doubt the explanation offered for the delay cannot said to be wholly satisfactory but at the same time the Court should also not loose sight of the fact that the decree of the Trial Court should be one in accordance with law.

7. In ***Annapoorni vs. Janaki* (1995) 1 LW 141** this Court had pointed out that the Court cannot grant a larger share or smaller share to the plaintiff merely because the defendant remained *ex-parte*. The partition decree must be in accordance with law. If the judgment and decree of the Trial Court are tested on the basis of the Principles laid down in *Annapoorni vs. Janaki*, it is clear that the decree does not satisfy the requirements of Law. Courts cannot adopt a pedantic approach in matters of delay. The Hon'ble Supreme Court in ***Delhi University vs. Government of Delhi* (2019)SCC Online 1624** has pointed out that the Court should not adopt hyper technical approach in matters of delay.

8. Taking into account the over all circumstances, I am of the opinion that if this decree is allowed to stand, it would not only be prejudicial to the petitioner but also against the law hence, the Civil Revision Petition is allowed. The delay of 1207 days in setting aside the *ex-parte* decree is condoned and I.A.No.511 of 2014 will stand allowed. No costs. Consequently, connected miscellaneous petition is closed.

29.07.2020

rsi

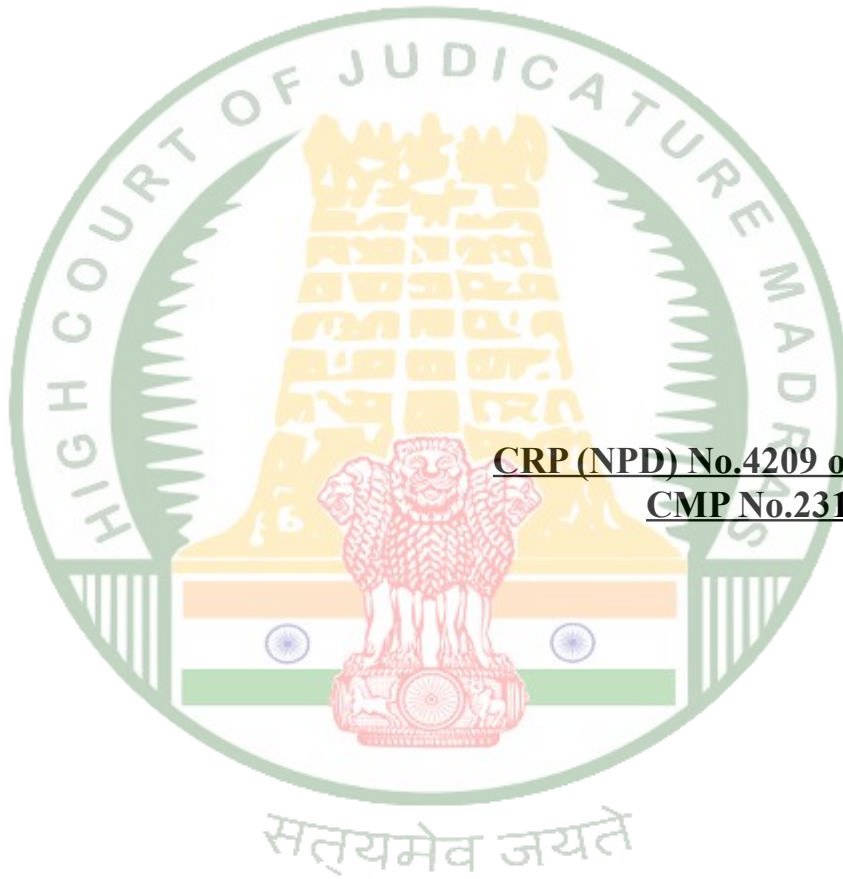
Index: No
Speaking order

To:

1. I Additional Subordinate Judge,
Coimbatore.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

R.SUBRAMANIAN, J.
rsi



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