



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD)No.2804 of 2018

and

C.M.P. (MD)No.12198 of 2018

WEB COPY

1.Rajamani

2.Poornasamy

: Petitioners /Respondents/Defendants

.. Vs ..

Karuppana Gounder

: Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.795 of 2015 in O.S.No.330 of 2006 on the file of the District Munsif Court, Oddanchatram.

For Petitioners :Mr.S.C.Herold Singh

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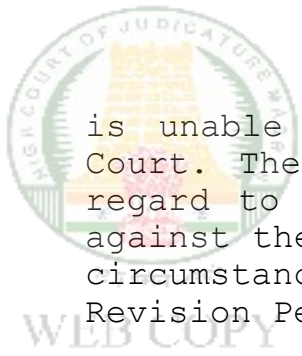
ORDER

This Civil Revision Petition is directed against the order passed by the learned District Munsif, Oddanchatram, in I.A.No.795 of 2015 in O.S.No.330 of 2006, dated 24.10.2018.

2.The brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

3.The respondent herein filed a suit in O.S.No.330 of 2006 before the District Munsif Court, Oddanchatram for partition of his 1/3 share. It is unfortunate to note that the respondent is the father and the petitioners are his sons. In the said suit, a preliminary decree was passed on 09.11.2006. Thereafter, a final decree application was filed in I.A.No.332 of 2008. The said application was dismissed for default on 29.07.2008 for non-payment of batta. Thereafter, the respondent herein filed an application in I.A.No.795 of 2015 to condone the delay of 2287 days in filing a petition to restore I.A.No.332 of 2008. The said petition was ordered, after considering the relationship between the parties and after accepting the explanations offered by the respondents in this Civil Revision Petition. Aggrieved by the same, the present Civil Revision Petition is filed.

4.The lower Court has excised its discretionary power judicially. In a suit for partition, every plaintiff, who succeeded in getting the declaration of his share, is entitled to get allotment as per his entitlement. It is to be noted that a fresh final decree application can be filed in this case, when the petition to condone delay was filed for restoration of application, which was dismissed for default. In such circumstances, this Court



is unable to find any error or infirmity in the order of lower Court. The respondent is the father and there is no dispute with regard to the quantum of share, as no further appeal is filed as against the preliminary decree, that was passed in the suit. In such circumstances, this Courts finds no merit in the present Civil Revision Petition.

5. Accordingly, this Civil Revision Petition is dismissed and the order passed by the learned District Munsif, Oddanchatram, in I.A.No.795 of 2015 in O.S.No.330 of 2006, dated 24.10.2018, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr

To

The District Munsif, Oddanchatram.

C.R.P. (NPD) (MD) No.2804 of 2018

24.07.2020

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