

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.(NPD) Nos.245 & 246 of 2021
and
C.M.P.No.2353 of 2021

Jagadeesan (died) ... Respondent / Petitioner / Plaintiff
1.J.Ranganathan
2.J.Ravichandran
3.J.Sampathkumar ... Petitioners / 3rd parties / 3rd parties
(in both C.R.Ps)

Vs

1.D.Raghupathy
2.R.Padhma
3.R.Vidiya ... Respondents/Petitioners/Defendants 1,4 & 5
(Respondents in C.R.P.No.245 of 2021)

1.Christopherraj ... Respondent / Petitioner / 6th Defendant
(Respondent in C.R.P.No.246 of 2021)

Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A.Nos.689 of 2017 and 690 of 2017 in O.S.No.590 of 2015 on the file of the III Additional Subordinate Court, Coimbatore dated 11.11.2020.

For Petitioners .. Mr.B.Gopalakrishnan
(in both C.R.Ps)

For Respondents .. Mr.T.Sai Krishnan
(in both C.R.Ps)

ORDER

C.R.P.No.245 of 2021 has been filed questioning the order dated 11.11.2020 in I.A.No.689 of 2017 in O.S.No.590 of 2015 pending on the file of the III Additional Subordinate Court Coimbatore.

2.C.R.P.No.246 of 2021 has been filed questioning the order dated 11.11.2020 in I.A.No.690 of 2017 in O.S.No.590 of 2015 pending on the file of the III Additional Subordinate Court Coimbatore.

3.I.A.No.689 of 2017 had been filed by the 1st, 4th and 5th defendants seeking to condone the delay of 282 days in filing an application to set aside the exparte decree.

4.I.A.No.690 of 2017 had been filed by the 6th defendant seeking to condone the delay of 231 days in filing an application to set aside the exparte decree.

5.It must be noted that O.S.No.590 of 2015 had been filed seeking partition and separate possession and also for declaration of title. In the suit, the defendants had taken a conscious decision not to participate in

further proceedings of the suit and therefore an exparte preliminary decree was passed on 02.11.2016.

6.Mr.B.Gopalakrishnan, learned counsel for the revision petitioner took the Court through merits of the case with respect to the contentions raised by the respondents herein. However, I would refrain myself from being drawn entering into a discussion on the merits of the suit.

7.Be that as it may, the plaintiff had the benefit of an exparte preliminary decree on 02.11.2016. Thereafter, the plaintiff also filed an application seeking to pass final decree. When notice was served on the said application, the defendants woke up and decided that would be in their interest, if they file applications to be permitted to participate in the judicial proceedings. Therefore, two separate applications came to be filed namely, I.A.Nos.689 of 2017 and 690 of 2017. Both these Interlocutory Applications came up for consideration before the III Additional Subordinate Judge, Coimbatore and by orders dated 11.11.2020 had been allowed with costs of Rs.5,000/- and Rs.3,000/- respectively.

8.Questioning that particular order, the plaintiff has come before this Court filing these two Civil Revision Petitions.

9.It is to be mentioned that the plaintiff had also unfortunately expired and the legal representatives had filed petition for seeking permission to file this Revision Petition.

10.During the course of hearing of both the Interlocutory Applications in I.A.Nos.689 of 690 of 2017, two witnesses were examined on behalf of the petitioners namely, 1st and 4th defendants. Documents were also marked. The main contention was that one of the witness also suffered blindness in both eyes and later got eye sight in one eye by treatment. The witness voluntarily grazed the witness box and had come forward to tender evidence and also to subject himself for cross-examination. It is also to be noted that on the side of the respondents also three documents had been filed.

11.After considering all these facts and taking into consideration the reasons given for filing the applications to condone such delay, the learned III Additional Subordinate Judge, Coimbatore had taken a decision that the delay should be condoned and that the parties should be permitted to participate in the judicial proceedings. Exercise of such discretion can be interfered with only if it is pointed out to be perverse. I

find no such reasons advanced by the learned counsels.

12.It would only be in the interest of the plaintiff that the defendants, whom, after all he had chosen to implead as defendants while instituting the suit, are permitted to participate in the judicial proceedings and thereafter, a considered judgment is passed on merits.

13.I find no reasons to interfere with the two orders under revision. Both the Civil Revision Petitions are dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

14.The parties may go back to the III Additional Subordinate Court, to agitate the issues before the said Court. I am confident that the learned III Additional Subordinate Judge, Coimbatore, will address the issues by viewing them from a different perspective and not as stated by me in this order.

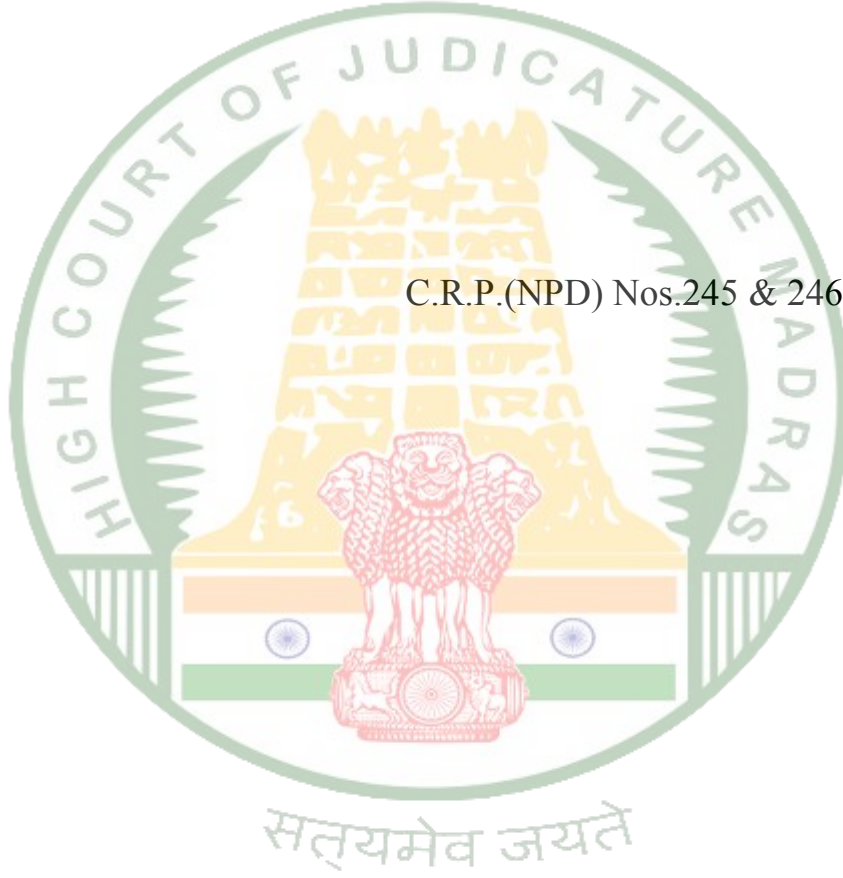
09.07.2021

smv
Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No

To,
The III Additional Sub Court, Coimbatore.

C.V.KARTHIKEYAN,J.

smv



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