

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.3419 of 2007
and M.P.No.1 of 2007

E.Harigovindarajan @ Harigovindan ...Petitioner
Vs.

VK.Elayalwar (since deceased)

- 1.Hema Elayalwar
- 2.E.Alamelu
- 3.Vijayalakshmi Saikumar
- 4.Kumudha (deceased)
- 5.Krishnaraj
- 6.R.Balasubramanian
- 7.Balavenkatarama Chetty
- 8.Sengottuvel Gounder
- 9.K.Shanmugam
- Bangarusamy Chettiar (deceased)
- 10.Syed Meeran
- 11.S.Manoharan
- 12.M.Veeramuthu Udayar
- 13.Rajamanickam
- 14.Kolanda Goundar
- 15.Kandasamy Goundar
- 16.Peria Goundar
- 17.Angamuthu Naicker
- 18.Narayanaswamy Naicker
- 19.KP Gopal
- 20.Ramasamy Goundar
- 21.Gopal

22.Ramaraju Reddiar
23.M.Palanivel Goundar
24.R.Mahalakshmi
25.R.Mohan Ranganathan
26.R.Gokula Kannan
27.R.Bagyalakshmi
28.S.Ramasami Goundar
29.Perumayammal
30.S.Jagadeesan
31.Vasantha Viswanathan
32.KR.Nalini
33.E.Geedhasan

...Respondents

(Respondents 1 and 11 dead, Respondents 2 to 4, 6, 12, 14, 17, 19 to 22, 24, 25 to 29 set exparte, hence dispensed with)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India as against the fair and decretal order dated 06.08.2007 passed in I.A.No.1166 of 2006 in O.S.No.66 of 2002 by the Additional District Judge, Fast Track Court No.II, Salem.

For Petitioner : Mr.B.S.Jhothiraman

For R30 to R32 : Mr.M.Guruprasad

For R1-3, 5,10,12,
15,17-20, 22-27 : exparte

for R6-8, 11,13,14

21,28,29,33 :Not ready in notice

ORDER

The present Civil Revision Petition is directed as against the fair and decretal order dated 06.08.2007 passed in I.A.No.1166 of 2006 in

O.S.No.66 of 2002 by the Additional District Judge, Fast Track Court No.II, Salem, thereby dismissing the petition to condone the delay of 1426 days in filing the petition to restore the suit.

2.Heard the learned counsel for the petitioner; learned counsel appearing for the respondents 30 to 32 and also perused the documents on record. Since the exparte order passed no notice was served on the remaining respondents.

3.The petitioner is the plaintiff. He filed the suit as against the respondents herein for partition in respect of the suit property. Initially, the suit was filed on the file of the Subordinate Court, Salem, as O.S.No.603 of 1999. Thereafter, the suit was transferred to the file of the Additional District Court, Fast Track Court No.II, Salem and re-numbered as O.S.No.66 of 2002.

4.The petitioner is residing at Chennai. He was not served any notice in respect of the transfer of the above suit. Therefore, he failed to

appear before the trial Court and as such the suit was dismissed for default on 12.12.2002. It is also stated that the 1st defendant is none other than the father of the petitioner and he died on 10.10.2006. After performing his last rites, and ceremonies, the petitioner met his counsel. Only after meeting his counsel he came to know that the suit filed by him was dismissed for default. Therefore, there was a delay of 1426 days in filing the petition to restore the suit. In this regard, it is relevant to rely upon the Judgment in the case of ***Sankaralingam and another Vs. V.Rahuraman [2002 (3) CTC 13]***. Relevant paragraphs are extracted hereunder:-

“16.The suit was originally instituted in the Sub Court Salem and numbered as O.S.No.926 of 1994. A separate Sub Court at Attur was constituted and all suits, which came in the jurisdiction of that Court were transferred to the Sub Court, Attur and in that way, the present suit was also transferred to the Sub Court, Attur and renumbered as O.S.No.366 of 1997. It has to be noted, it is not the case of the petitioners that their counsel at Salem was not informed about the transfer of the suit to the file of Sub Court, Attur. In fact, in the affidavit filed in support of the petition they have stated that they met their counsel at Salem and he informed that

he (counsel) was not able to attend the Sub Court, Attur on all the hearing dates and on the particular date i.e., on 06.04.1999, he (counsel) did not attend the Sub Court at Attur and hence was not aware about the passing of the exparte decree. Once petitioners had engaged a counsel and who filed a vakalat, any notice given by the Court or by the other party to that counsel would constitute sufficient and proper notice to the petitioners. That being so, when the petitioners' counsel at Salem was informed about the transfer of the suit and in fact the said counsel also attended some hearing dates at Sub Court, Attur, petitioners cannot be heard to say that the transferee Court also should have issued notice about the transfer of the suit to them. In fact this Court (High Court) had way back in the year 1981, issued instructions to the Subordinate Courts for their guidance. The relevant portion of the said Circular reads as under,

"(i)When suits, appeals or other proceedings are transferred from one court to another court, the transferor court shall post before it, the cases to a particular date and take endorsements of the Advocates, who have already entered appearance for the parties that they are aware of the suits, appeals or other proceedings being transferred to a particular court and only thereafter

forward the papers to the transferee court.

(ii) In cases where parties have not already been served, notice or fresh notice (as the case may be) shall be issued by the transferee court."

Inasmuch as in the present case the transferor Court has followed the instruction (i) referred supra, there is no substance in the contention of the learned counsel for the petitioners.

17. Apart from the instructions referred supra given by this High Court in the Circular, this Court considers that the transferor and transferee courts should follow some more procedures such as,

(a) while implementing the instruction No.1, the Courts should give reasonable time to both the counsel to inform their respective clients,

(b) the transferee Court on receipt of the cases transferred to its file, should put a notice in the Court notice board giving all details including the first hearing date, to avoid unnecessary delay in the respective parties coming to know about the transfer of the suits which would enable them to take follow up actions that may be necessary as the situation warrants.

18. This Court sums up the instructions as under to be followed by the transferee Courts, whenever suits

are transferred to their file because of the constitution of new Courts or due to enhancement of pecuniary jurisdiction,

"1. When suits, appeals or other proceedings are transferred from one court to another court, the transferor court shall post before it, the cases to a particular date and take endorsements of the Advocates, who have already entered appearance for the parties that they are aware of the suits, appeals or other proceedings being transferred to a particular court and only thereafter forward the papers to the transferee court.

2. The transferor Court will specifically mention the date when the case will be taken up for the first hearing in the transferee Court, which should be at least two weeks after the date when the endorsement of the Advocates are taken.

3. In cases where parties have not already been served, notice or fresh notice (as the case may be) shall be issued by the transferee court giving reasonable time for the parties to appear before Court either by himself/themselves or through counsel.

4. As soon as the transferee Court receives the list of cases transferred to its file, it should prepare a list containing the details and put up in the Court notice

board mentioning the first hearing date."

5.This Court in the year 1981, issued instructions to the Subordinate Courts, to follow the procedure, when the matters are transferred to the other Court. Accordingly, when the suits are transferred from one Court to other Court, the transferee Court shall post before the cases to a particular date and take an endorsement from the counsels, who already entered appearance for the parties, that they are aware of the suits being transferred to a particular Court and only thereafter, forward the papers to the transferee Court.

6.In the case on hand, no evidence to show that the procedure followed by the transferee Court, viz., the Subordinate Court, Salem. In fact the transferee Court on receipt of the entire bundle should put a notice in the Court notice board giving all details including the 1st hearing date, to avoid any delay in transferring the suit. Therefore, the order passed by the Court below is liable to be set aside.

7. Accordingly, the order dated 06.08.2007 passed in I.A.No.1166 of 2006 in O.S.No.66 of 2002 by the Additional District Judge, Fast Track Court No.II, Salem, is set aside and this Civil Revision Petition is allowed. Further, the suit is restored and the trial Court is directed to dispose of the suit in O.S.No.66 of 2002 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To

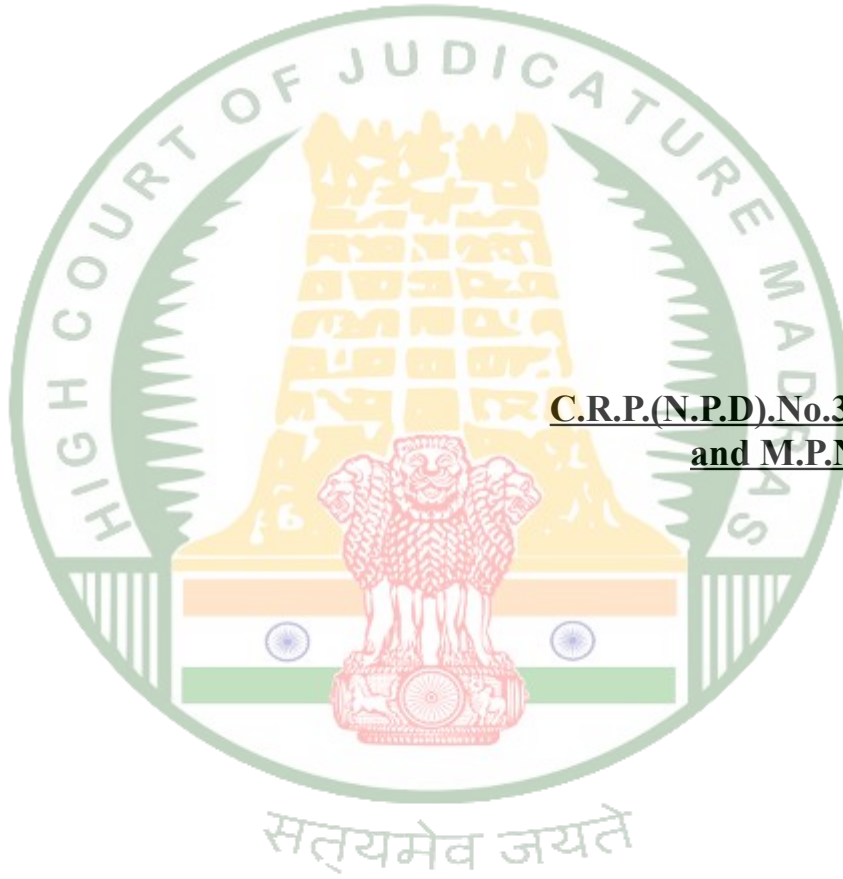
- 1.The Additional District Judge, Fast Track Court No.II, Salem.
- 2.The Subordinate Court, Salem.

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