

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.320 of 2009

- 1.E.Balammal
- 2.S.E.Loganathan(died)
- 3.S.E.Dilli Babu @ Babu
- 4.S.E.Kandavel
- 5.S.E.Kumaravelu @ Velu
- 6.L.Shanthi
- 7.L.Santhosh Kumar
- 8.L.Parthasarathi

(petitioners 6 to 8 brought on record as
LR's of the deceased 2nd petitioner
viz., S.E.Loganathan vide court order dated
05.04.2019 made in MP's 6191, 6181
and 6185 of 2019 in CRP 320/2009

..Petitioners

Vs.

- 1.S.A.Rayan(died)
- 2.Ellappan
- 3.Sivalingam
- 4.Gevarchand Jain
- 5.Ekambara Naicker
- 6.Lourdu Ammal
- 7.Arokkiammal
- 8.Shakul Hameed
- 9.Srinivasa Babu
- 10.R.Felix
- 11.R.Alex
- 12.R.Suresh

(RR10 to 12 brought on record as LR's of the
deceased R1 S.A.Rayan vide court order
dated 01.02.2021 made in CMPs 5289, 5290 &

5292/2020 in CRP.No.320 of 2009

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure praying against the order dated 20.07.2007 passed in IA.No.218 of 2005 in CMA.Sr.No.7589 of 2005 on the file of the Subordinate Judge, Kancheepuram.

For Petitioners : M/s.T.Mathi

For Respondents

R1 : died (steps taken)
 R2 to 4 : Notice served
 R5 to 9 : give up vide court
 order dated 21.11.2019
 R10 to 12 : not ready in notice

ORDER

The civil revision petition is arising out of order dated 20.07.2007 passed in IA.No.218 of 2005 in CMA.Sr.No.7589 of 2005 on the file of the Subordinate Judge, Kancheepuram thereby dismissing the petition to condone the delay in filing civil miscellaneous appeal.

2. The petitioners are the plaintiffs. They filed suit in the year 1987 for declaration and recovery of possession with the mesne profit. Before the trial court, the second plaintiff was examined as PW1. He was

not present for cross examination. Therefore, the trial court dismissed the suit for default. Immediately, the petitioners filed application to restore the suit. The petition was also dismissed by the trial court by the fair and decreetal order dated 24.06.2005. The petitioners instead of filing civil miscellaneous appeal, have directly approached this Court by way of civil revision petition. Thereafter, the Registry returned the paper and filed civil miscellaneous appeal as against the fair and decreetal order in IA.No.1319 of 2004. Therefore, there was delay of five days in filing civil miscellaneous appeal. They filed petition to condone the delay in IA.No.218 of 2005 in CMA.Sr.No.7589 of 2005. The first appellate court dismissed the said application only for the reason that the suit is of the year 1987 and for the past twenty years without commencement of the trial it was dragged by the plaintiffs. Further, there is no bonafide on the part of the plaintiff to proceed with the suit.

3. It is seen that the petition dismissed by the first appellate court is only to condone the delay of five days. Instead of filing civil miscellaneous appeal, they filed civil revision petition before this Court and as such there was delay of five days in filing civil miscellaneous

appeal.

4. Considering the above, the order dated 20.07.2007 passed in IA.No.218 of 2005 in CMA.Sr.No.7589 of 2005 on the file of the Subordinate Judge, Kancheepuram is set aside and the condone delay petition is allowed on cost of Rs.5,000/- (Rupees Five Thousand only) payable by the petitioners to the respondents within a period of two weeks from the date of receipt of copy of this order. The first appellate court is directed to number the civil miscellaneous appeal and pass orders on merits and in accordance with law within a period of eight weeks from the date of numbering the appeal.

5. With the above directions, the civil revision petition is allowed. No order as to costs.

09.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

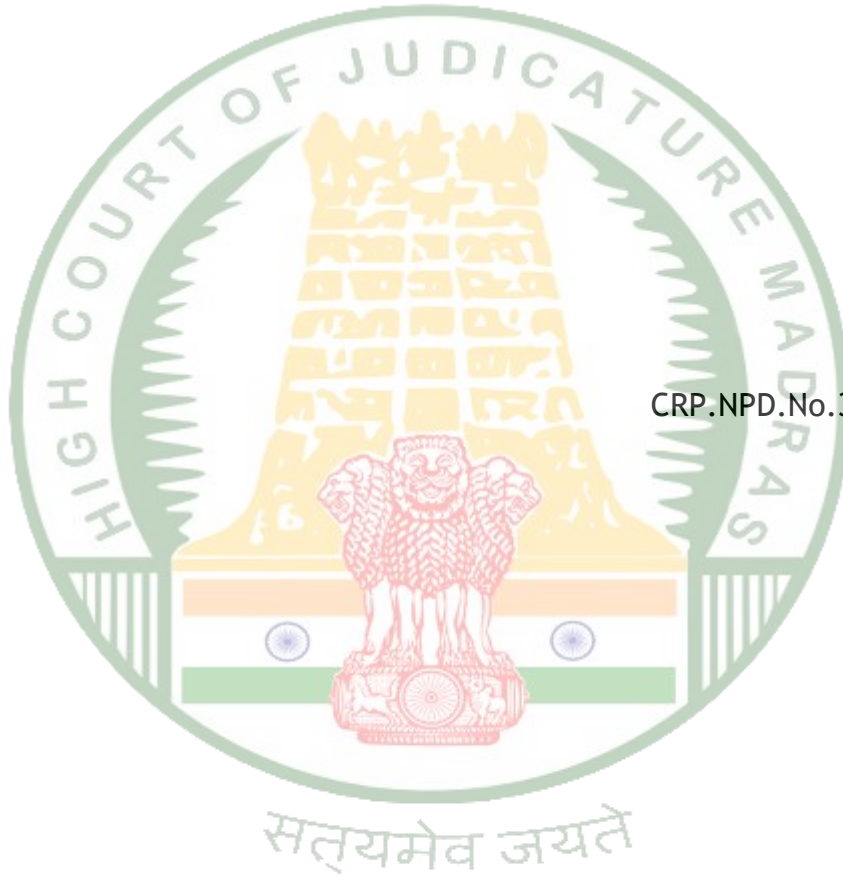
The Subordinate Judge,
Kancheepuram.



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G.K.ILANTHIRAIYAN,J.

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