

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(NPD) No.1157 of 2018

and

C.M.P.No.5981 of 2018

A.Thirunarayanan

... Petitioner

Vs

Senthilkumari

... Respondent

Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 17.01.2018 made in I.A.No.106 of 2017 in O.S.No.45 of 2011 on the file of the Court of District Munsif cum Judicial Magistrate, Kattumannarkoil.

For Petitioner : Mr.A.Muthukumar

For Respondent : M/s.Varsha Ramesh for
Mr.P.R.Thiruneelakandan

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 17.01.2018 made in I.A.No.106 of 2017 in O.S.No.45 of 2011 on the file of the Court of District Munsif cum

Judicial Magistrate, Kattumannarkoil, thereby dismissing the petition to condone the delay in filing the petition to set aside the ex-parte decree.

2. The revision petitioner is the second defendant and the respondent is the plaintiff. The respondent filed a suit in O.S.No.45 of 2011 for partition. On receipt of the suit summons, the petitioner failed to appear before the Trial Court and as such, he was set ex-parte and ex-parte decree was passed on 23.11.2011. Therefore, the petitioner filed a petition in I.A.No.106 of 2017 to set aside the ex-parte decree with a delay of 1878 days. In the mean while, the respondent herein filed an application in I.A.No.63 of 2015 for passing a final decree and the same was allowed on 03.06.2015. Aggrieved by the same, the respondent filed an appeal in A.S.No.66 of 2019. In the said appeal, the respondent contended that 8 items of the properties were left out and item Nos.25 and 26 were already sold by the respondent. Therefore, the respondent contended that the final decree has to be set aside and the case be remitted back to the Trial Court for re-consideration according to the existing circumstances to satisfy both the petitioner and the respondent

herein. Considering the same, the First Appellate Court by the Judgment and Decree dated 17.03.2021, set aside the decree passed in I.A.No.63 of 2015 in O.S.No.45 of 2011 and remitted the case back to the Trial Court for disposal in respect of final decree.

3. The learned counsel for the petitioner submitted that pending the present Civil Revision Petition, on 18.11.2019, the respondent herein issued notice, thereby called upon the petitioner to allot 1/5th share in respect of the other properties, which were already left out in the suit for partition. Though, the final decree was set aside without preliminary decree with the left out properties, it is not possible to pass any final decree.

4. In view of the above, the order dated 17.01.2018 made in I.A.No.106 of 2017 in O.S.No.45 of 2011 on the file of the Court of District Munsif cum Judicial Magistrate, Kattumannarkoil, is hereby set aside and the Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs.10,000/- as cost within a period of two

weeks, failing which the order passed by this Court shall stand automatically cancelled. After restoration of the suit, the parties are at liberty to add left out properties for partition. The Trial Court is directed to dispose of the suit within a period of three months from the date of restoration of the suit on its file. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

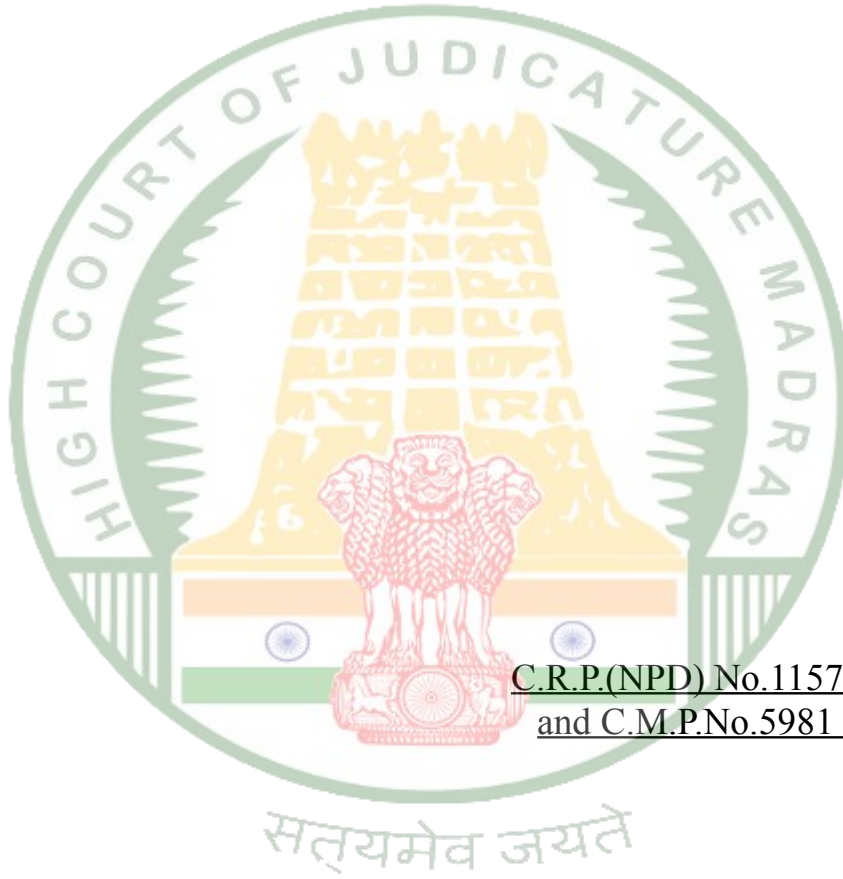
The District Munsif cum Judicial Magistrate,
Kattumannarkoil.

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G.K.ILANTHIRAIYAN,J.

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