

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD)No.416 of 2021

V.Stanley

...Petitioner

Vs

Lourdudamy (died)

1.Irudaya Mary

2.Kanikkai Mary

3.Charles

4.Arokiyasamy

5.Antony

6.Sahaya Mary

7.John Peter

8.A.Regina Mary

9.Maria Rose

10.Motcharakkani

11.Vincent Joseph

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal Order in I.A.No.1193 of 218 in O.S.No.367 of 2015 dated 17.02.2020 on the file of the learned Principal Subordinate Judge, Sub-Court, Vellore.

For Petitioner : Mr.T.R.Rajaraman

ORDER

The present civil revision petition has been filed against the order in I.A.No.1193 of 2018 in O.S.No.367 of 2015 dated 17.02.2020 on the file of the Principal Subordinate Court, Vellore.

2. The case of the petitioner is that the petitioner had filed a petition in I.A.No.1193 of 2018 under Section 5 of the Limitation Act to condone the delay of 86 days in filing the application to implead the legal heirs of the deceased Lourdusamy/first defendant. After careful consideration, the Court below has dismissed the application filed by the petitioner. Hence, the present petition has been filed.

3. The learned counsel for the petitioner submits that the order of the learned District Judge, in dismissing the petition filed to condone the delay of 86 days in impleading the Legal Representatives of the deceased first respondent in the suit, is erroneous and liable to be set aside. The learned judge ought to have allowed the petition by condoning the delay of 86 days and should have permitted the petitioner to implead the Legal Representatives of the first respondent in the original suit. The petitioner

is 83 years old and he has justified the reasons stated in the affidavit for delay of 86 days in filing the condone delay petition to implead the legal representatives of the deceased first respondent. The petitioner had filed the condone delay petition on 04.09.2018 i.e., within 13 days from the date of memo 21.08.2018 filed by the counsel for the respondent furnishing the details of the legal representatives of the deceased first respondent. The learned counsel further submitted that the learned trial Judge ought not to have dismissed the petition by taking the hyper-technical view in a petition to condone delay in impleading the legal representatives of deceased defendant. The learned judge ought not to have a hyper-technical view that I.A.No.424 of 2016 seeking to implead the ninth respondent as ninth defendant in the suit is pending. Hence, the petitioner ought not have showed ninth respondent in the above condone delay petition, which is erroneous and untenable. The learned counsel further states that the learned trial Judge ought to have seen that the pending I.A.No.424 of 2016 to implead ninth respondent has nothing to do with the condone delay petition to condone the delay of 86 days to implead the legal representatives of deceased first respondent. The learned judge ought to have seen that showing the ninth respondent as

party in the cause title, at best, can only be a clerical error and the learned judge ought not to have dismissed the petition on that ground alone. The trial Court ought to have taken a lenient view as per the directions of the Hon'ble Supreme Court while considering the delay in impleading the legal representatives. Hence, the learned counsel for the petitioner prays to allow this petition.

4. Heard the learned counsel for the petitioner and carefully perused the pleadings as well as the other materials available on record.

5. On going through the applications and submissions made by the learned counsel for the petitioner that the first defendant in the suit has died and the same was verified by the respondent on 09.03.2018 by filing a memo. The petitioner has filed memo dated 05.06.2018 stating that there was no LRs of the deceased first defendant. The respondents have filed an objection stating that in the existence of widow, daughter and son, the petitioner has filed memo dated 02.08.2018 without notice to respondent to furnish the particulars of LRs. The respondents have filed memo dated 21.08.2018 stating the particulars of LRs. Per contra, it is

the case of the respondents that the petitioner had filed an application in I.A.No.424 of 2016 to implead the present ninth respondent as ninth defendant in the suit and the said application is pending. The Court is of the view that he is not a party in the suit and has been purposely added in this application, which is filed under Section 5 of Limitation Act, to condone the delay of 86 days.

6. Considering the facts and circumstances of the case, this Court is of the view that the delay in filing the said application is not huge and the legal heirs should have been provided with opportunities to file the same. The petitioner is 83 years old person at the time of the application. Hence, this Court is of the view that the Court below should have given another chance to the parties for taking steps. The Court below is further directed to condone the delay of 86 days and direct the parties to implead the legal heirs within a period of two month from the date on which the order copy is made ready and received by the petitioner.

7. With th above directions, the present Civil Revision Petition stands disposed of. No costs.

04.03.2021

Index: Yes/No
Speaking order/Non Speaking order
sbn

To

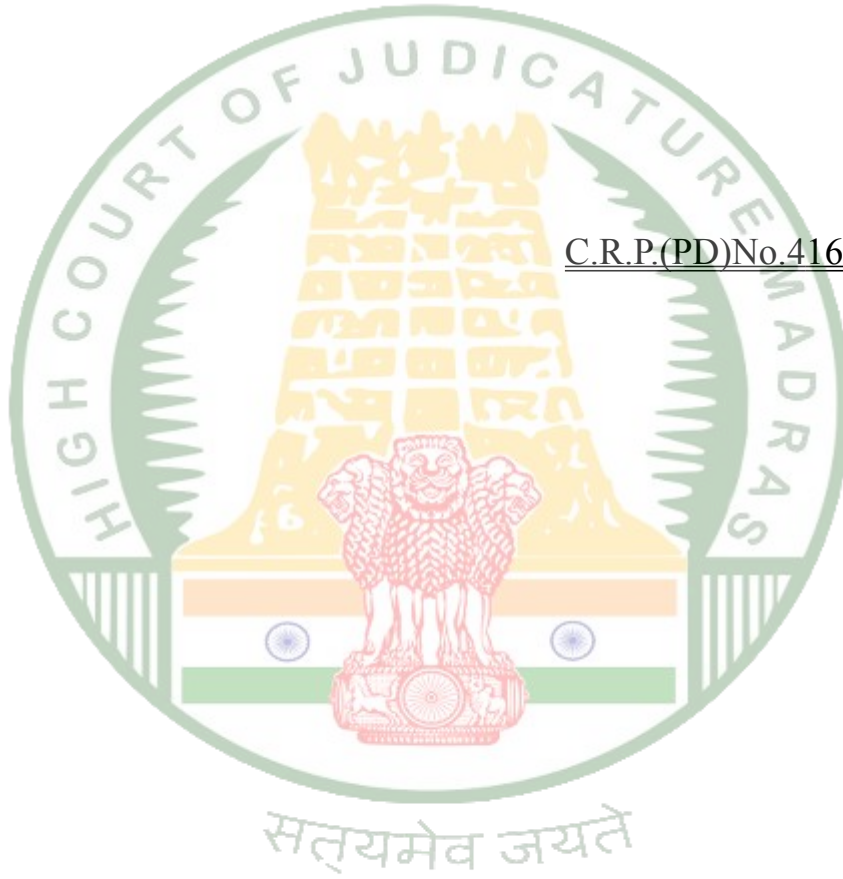
The Subordinate Court,
Vellore.



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V.BHAVANI SUBBAROYAN, J.

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