

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

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

CRP.NPD.No. 2294 of 2015

and

MP.No.1 of 2015

Palanisamy

... Petitioner

Vs.

1. P. Ramasamy

2. Muthayal

3. Mahalingam

4. Kandan @ Kandasami

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order dated 04.12.2013 made in I.A.No.1134 of 2012 in O.S.No.267 of 2006 on the file of the Court of the District Munsif, Gobichettipalayam.

For Petitioner : Mr.M.V.Krishnan

For Respondents : Mr.R.T.Doraisamy (for R-1)

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ORDER

This Civil Revision Petition is directed as against the Fair and Decretal order in I.A.No.1134 of 2012 in O.S.No.267 of 2006 dated

04.12.2013 on the file of the District Munsif Court, Gobichettipalayam, thereby, dismissing the petition filed by the petitioners/defendants to condone the delay of 1031 days in filing and set aside the ex-parte decree passed in O.S.No.267 of 2006.

2. The petitioner is the second defendant in the suit filed by the first respondent for declaration and injunction in respect of the suit schedule properties. The petitioner and other defendants, viz., the respondents 2 to 4 filed written statements in the suit. Thereafter, they failed to appear before the trial Court and the matter was posted for trial. P.W.1 was examined on 04.01.2001. Thereafter, the matter was posted for cross examination of P.W.1 on several hearings and the defendants were set ex-parte. Thereafter, the ex-parte decree was passed on 19.01.2010. The petitioner and the respondents 2 to 4 filed the petition to set aside the ex-parte decree with petition to condone the delay of 1031 days in filing the petition to set aside the ex-parte decree. They have stated the reason that the first defendant, suffered jaundice from the month of January 2010 onwards. Thereafter, she had taken treatment at Kerala for the past 2 years. Therefore, she could not contact her counsel and failed to appear before the trial Court for cross

examination of P.W.1.

3. On a perusal of the affidavit filed in support of condone delay petition, the 2nd respondent (1st petitioner in I.A) herein stated that the 2nd and 3rd defendants are brothers of her husband. Whereas, in the plaint, the 1st respondent herein stated that the 2nd and 3rd defendants are the sons of the 1st defendant. That apart, the second defendant alone viz., one of the sons filed the present Civil Revision Petition against the dismissal of condone delay petition. Admittedly, there are four defendants, in which the 1st defendant viz., the petitioner herein alone suffered with jaundice. There was no whisper about the reasons for non-appearance of other defendants before the trial Court in the affidavit filed in support of the said I.A.

4. In fact, on a perusal of the affidavit filed in support of the said I.A, usual reasons were stated as if the petitioner herein suffered from jaundice and had taken treatment at Kerala and no one was examined on behalf of the petitioner and no documents were also marked. In fact, the 1st respondent marked documents as Ex. D1 to Ex.D.3. Accordingly, the petitioner and the respondents 2 and 3 received notice in E.P.No. 44 of 2012. After receipt of

the notice, and after lapse of three months they have filed the I.A to set aside the ex-parte decree with condone delay petition. The petitioner failed to file an application within a period of 30 days viz., from the date of her knowledge. Therefore, the trial Court rightly dismissed the petition to condone the delay of 1031 days in filing the petition to set aside the ex-parte decree. As such, this Court finds no irregularity or infirmity in the order passed by the trial Court.

5. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

07.01.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

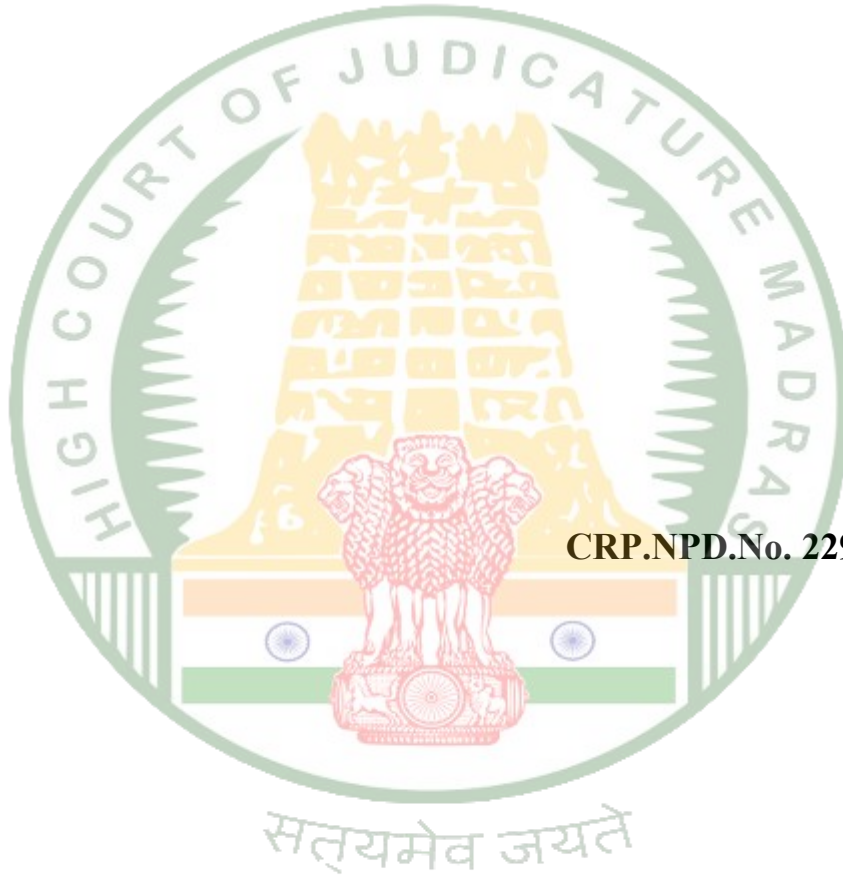
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To

The District Munsif Court, Gobichettipalayam.

G.K.ILANTHIRAIYAN,J.

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