

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

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

CRP (PD) No.1378 of 2018
and CMP.No.7397 of 2018

1.Karthika
2.Dilip Kumar

... Petitioners

Vs.

1.The Commissioner
Ambur Municipality,
Nethaji Salai,
Ambur Town,
Vellore District.

2.Mohan

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 25.04.2017 made in I.A.No.1 of 2015 in O.S.No.120 of 2009 on the file of the Sub Judge, Vaniyambadi, Vellore District.

For Petitioners : M/s.Elizabeth Ravi

For R1 : Mr.G.Rajesh
Government Advocate (CS)
for M/s.V.Jaya Prakash Narayanan

For R2 : No Appearance

ORDER

This Civil Revision Petition is directed against the fair and decreetal order dated 25.04.2017 made in I.A.No.1 of 2015 in O.S.No.120 of 2009 on the file of the Sub Judge, Vaniyambadi, Vellore District, thereby allowing the petition to condone the delay in filing the setting aside exparte decree.

2. The petitioners are the plaintiffs and the first respondent is the second defendant and the second respondent is the first defendant. The petitioners filed a suit for partition in respect of the suit property. After receipt of the suit summon, the first respondent herein failed to appear before the Trial Court and as such they were set exparte and exparte preliminary decree was passed on 08.06.2011. Thereafter, the petitioners also filed a petition for passing final decree in I.A.No.92 of 2011. In the said application, notice was issued and on receipt of the same, the first respondent herein filed a petition to set aside the exparte decree with condone delay petition for condoning the delay of 1199 days in filing the petition.

3. The learned counsel for the petitioner vehemently contented that the first respondent did not even state any single reason for the huge delay of 1199 days in filing the setting aside exparte decree. She further submitted that though the first respondent is being a Government, there is no discrimination between the Government and the private parties. However, they may be stated sufficient cause for the delay of 1199 days in filing the setting aside exparte decree petition. After the decree, the petitioners filed a petition for final decree and in the said petition, the first respondent was duly served the notice. Only on receipt of the notice, the first respondent came forward to file the set aside the exparte decree that to on enormous delay. In fact, they also duly received the notice in the suit and even then they failed to appear before the Trial Court. Considering those aspects, the Court below allowed the petition.

4. A perusal of the affidavit filed in support of the condone delay petition reveals that the petitioners are minors at the time of filing the suit. Thereafter, they attained major and even then did not take any steps to declare the major. At the time of passing a preliminary decree on 08.06.2011, they attained major and even then they failed to declare themselves as major and as such the decree itself is void and it cannot be

executed. The Court below considered the said aspects and had given one more opportunity to the first respondent to defend the suit filed by the petitioners herein for partition.

5. On a perusal of the written statement along with the petition to set aside the exparte decree reveals that the first respondent purchased the entire suit property ad-measuring 8.19 acres by a registered sale deed dated 19.10.2005 from the first defendant viz., the father of the petitioners herein and constructed godown for manure. Therefore, the suit itself is classified one filed by the minor children of the first defendant viz., their father. Therefore, the Court below rightly allowed the petition to condone the delay in filing the setting aside exparte decree.

6. In view of the above, this Court finds no infirmity or illegality in the orders passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. However, the Court below failed to impose any cost while allowing the petition to condone the delay of 1199 days. Therefore, the first respondent is directed to pay a sum of Rs.10,000/- as cost to the petitioners, within a period of two weeks from

the date of receipt of a copy of this order. Consequently connected miscellaneous petition is closed. No costs.

16.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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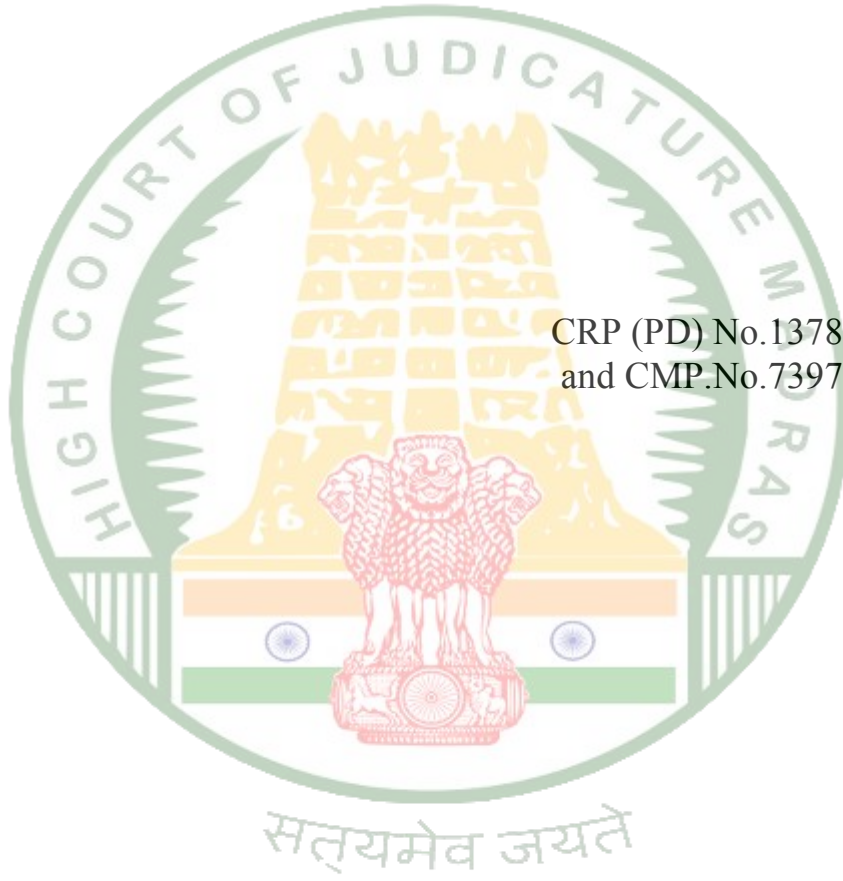
To
The Sub Judge,
Vaniyambadi,
Vellore District.



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G.K.ILANTHIRAIYAN, J.

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