

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

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

CRP.NPD.No.3168 of 2015
and MP.No.1 of 2015

Velusamy

..Petitioner

Vs.

Ramasamy

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the order and decreetal order dated 16.06.2015 made in IA.No.432 of 2010 in OS.No.1422 of 2000 on the file of the III Additional District Munsif, Coimbatore.

For Petitioner : Mr.G.Mohan

For Respondent : Mr.C.R.Prasanan

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This Civil Revision Petition is arising out of order and decreetal order dated 16.06.2015 made in IA.No.432 of 2010 in OS.No.1422 of 2000 on the file of the III Additional District Munsif,

Coimbatore thereby dismissing the petition to condone delay in filing the setting aside the exparte decree.

2. The petitioner is the second defendant in the suit filed by the respondent herein for partition. According to the respondent herein, the suit property was purchased from the income of joint family property by the respondent, his father and the petitioner herein by the registered sale deed dated 19.03.1975. Since their father was the Karta of the family, the sale deed was registered in his name. Thereafter, they were being in joint possession in the suit schedule property. Therefore, he sought for 1/3 share in the suit schedule property. While pending the suit, he was set exparte on 08.09.2004. Thereafter he filed petition for setting aside the exparte decree in IA.No.300 of 2005 and the same was allowed. Even then, the petitioner did not chose to file any written statement in the main suit. In fact even before that on 20.08.2003 the petitioner was called absent and no written statement was filed. Therefore he was set exparte and subsequently exparte decree was set aside and permitted him to file written statement. Again, he was called absent on 20.01.2007 and as such the trial court passed exparte preliminary decree in OS.No.1422 of 2000. After exparte decree, the respondent plaintiff issued notice on 31.03.2009 thereby called upon the petitioner

to divide the suit property amicably as per the preliminary decree passed in OS.No.1422 of 2000. Even then, the petitioner did not chose to file any petition to set aside the exparte decree immediately. Only in the year 2010 they filed petition to set aside the exparte decree along with delay of 1040 days in filing the setting aside the exparte decree petition.

3. That apart, the petitioner also filed suit for injunction in OS.No.628 of 2000 as against the respondent herein. In fact, both the suits were ordered for joint trial in which also the petitioner did not appear and as such the said suit was dismissed for default. Again the petitioner filed petition to restore the said suit with the delay of 1068 days in IA.No.431 of 2010. The said application was dismissed by order dated 16.10.2013. Thereafter the petitioner did not take any step to file any appeal and it became final. Further petitioner duly received the legal notice issued by the respondent dated 31.03.2009 and 01.04.2009. Therefore, he had knowledge about the exparte decree passed against him. Further on perusal of the affidavit filed in support of condone delay petition, the petitioner stated usual reason that he fell ill for the reason of severe jaundice. The petitioner failed to mention from which date he fell ill and on which date he recovered. Therefore, no sufficient reason has been stated by the petitioner in the

petition for condoning delay. As such this Court finds no irregularity or infirmity in the order passed by the court below.

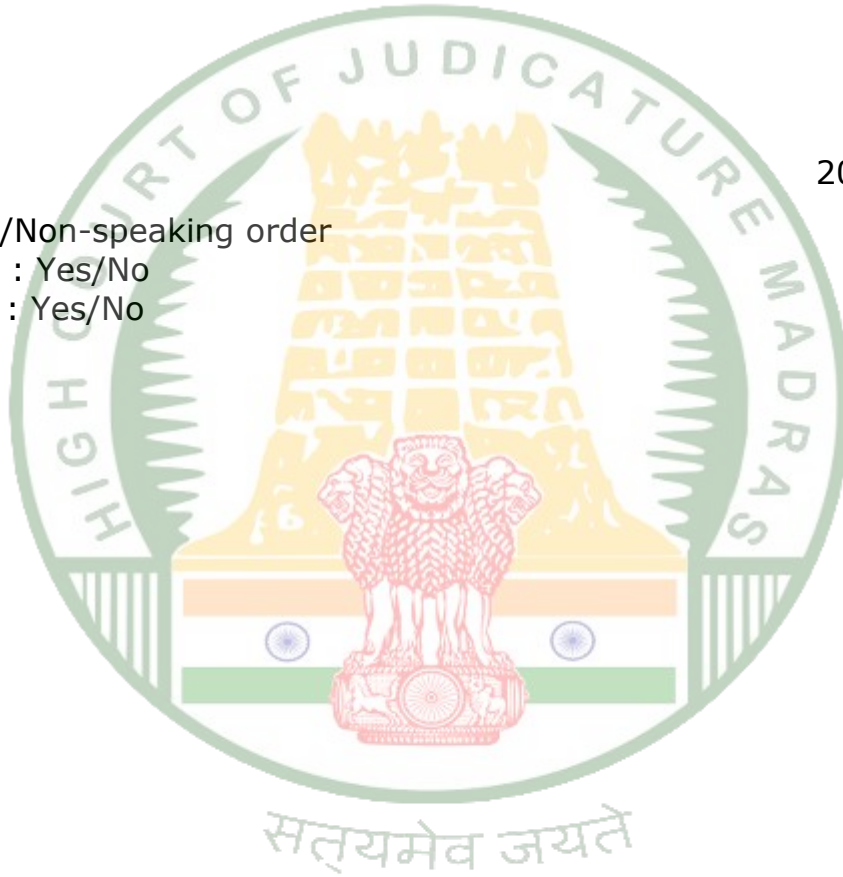
4. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

20.01.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No
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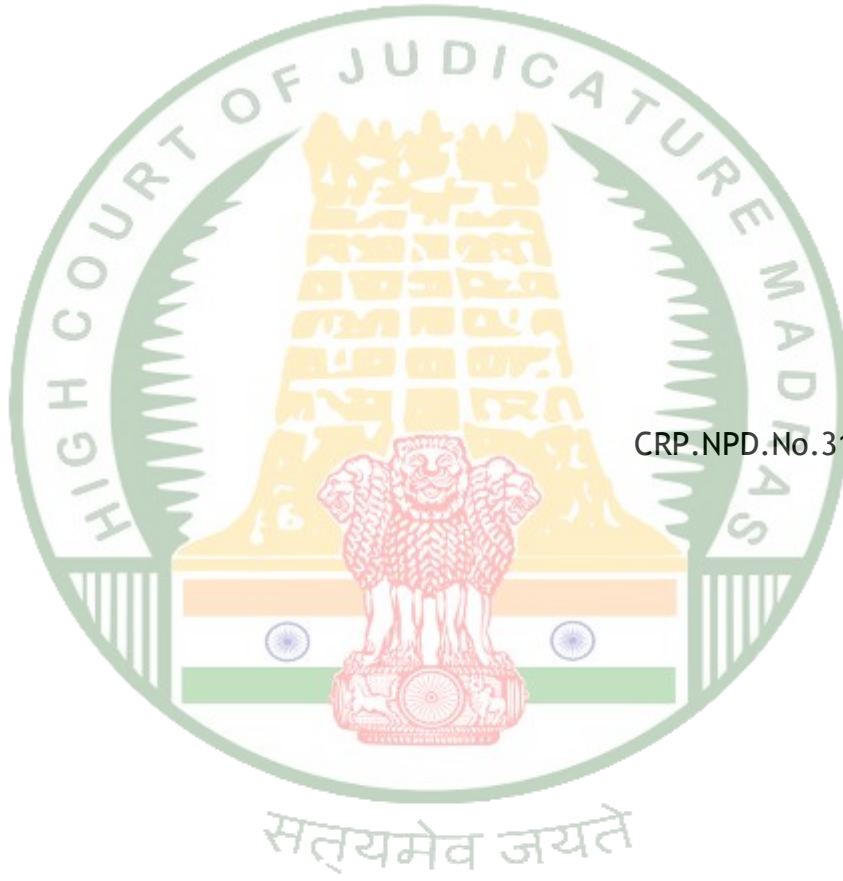
The III Additional District Munsif,
Coimbatore.



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G.K.ILANTHIRAIYAN,J.

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