

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

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

CRP.NPD.No.3511 of 2015
and MP.No.1 of 2015

1.Sivalingam
2.Pushpam
3.Sivasankar
4.Sivasankari
5.Sivarani alias Chinnapappa

...Petitioners

Vs.

1.Gandhi
2.Deivanai

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the fair and decretal orders of the learned District Munsif of Krishnagiri dated 12.09.2014 in IA.No.428 of 2014 in OS.No.128 of 2011.

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For Petitioners

: Mr.J.Hariharan
for Mr.V.Nicholas

For Respondents

: Mr.V.Lakshminarayan

ORDER

The present Civil Revision Petition is arising out of fair and decreetal orders of the learned District Munsif of Krishnagiri dated 12.09.2014 in IA.No.428 of 2014 in OS.No.128 of 2011 thereby dismissing the petition to condone the delay of 519 days in filing the set aside the exparte decree dated 02.03.2012.

2. The petitioners are the defendants in the suit filed by the respondents herein for partition. After receipt of notice in the suit, the petitioners engaged counsel on behalf of them. Thereafter they failed to file any written statement and also failed to appear before the trial court. Therefore, they were set exparte. The exparte decree was passed on 02.03.2012. Thereafter, the respondents filed petition for final decree in IA.No.826 of 2012. In the said petition also the petitioners were duly served notice and the earlier counsel who appeared on behalf of them in the original suit entered appearance on 15.10.2012 in the final decree application. Thereafter, they failed to file any counter in the said application and the exparte final decree was also passed on 28.02.2013. On the other hand, the petitioners filed petition to set aside the exparte decree dated 02.03.2012 for the reason that the counsel who appeared on behalf of them in the suit did not properly instruct the petitioners to file written statement as well as

other proceedings. Even after informing the fact of exparte final decree it was not duly instructed to the petitioners to file appropriate petition to set aside the exparte decree. Therefore, there was a delay of 519 days in filing the petition to set aside the exparte decree.

3. On perusal of the records, it shows that the petitioners were duly served notice in IA.No.826 of 2012 for passing final decree on 15.10.2012. Thereafter Advocate Commissioner was appointed and final decree was passed on 28.02.2013. While pending final decree application, after period of four months, without even filing any counter in the final decree application, the petitioners filed petition in the year 2014 to set aside the exparte decree with the delay of 519 days.

4. The first petitioner is the father. The second petitioner is the first wife. They gave birth to the petitioners 3 to 5. The respondents are born through the second wife of the first petitioner herein. Now, the trial court decreed the suit and allotted 2/7 share in the suit property in favour of the respondents herein.

5. The learned counsel for the petitioners would submit that the suit property is an ancestral property and as such the respondents

are not having equal share and as such the petitioners have got very good case to succeed before the trial court.

6. The learned counsel for the respondents would submit that admittedly the suit property was allotted to the first petitioner by way of partition among their brothers. Therefore, the suit property is not ancestral one and the respondents are having equal share in the suit property and the trial court rightly allotted 2/7 share to them.

7. It is also curious to note that the petitioners did not file any appeal suit as against the judgment and decree so far and also failed to file any application to set aside the exparte final decree in IA.No.826 of 2012.

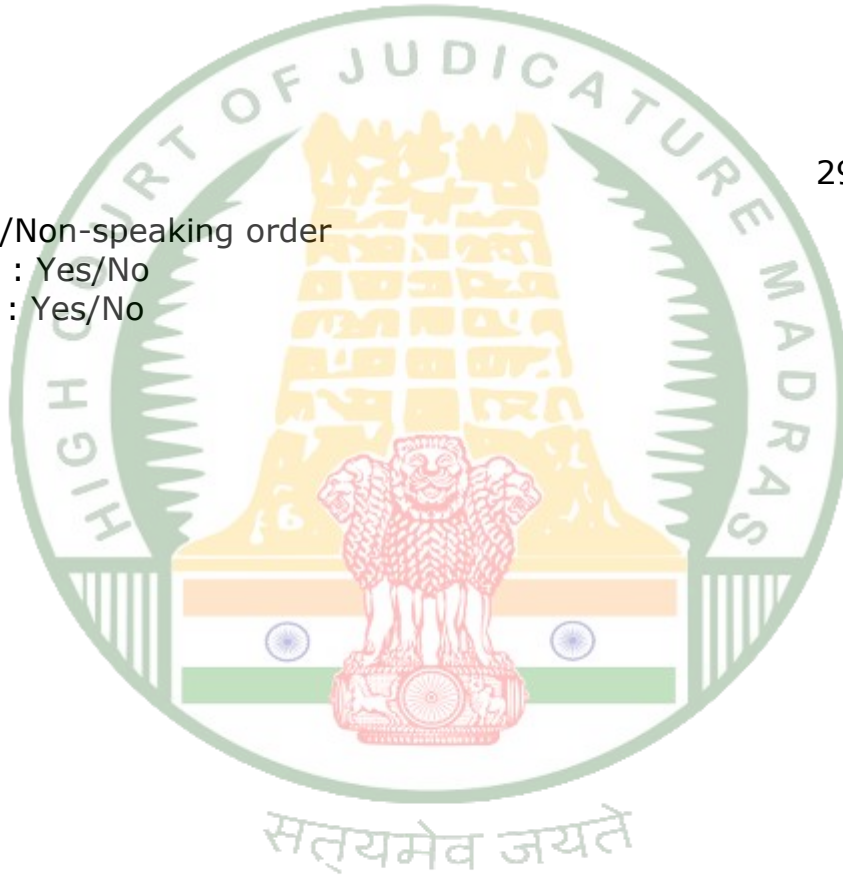
8. The learned counsel for the petitioners would submit that the petition to set aside the final decree application was filed and the same was returned for the reason that the present petition to set aside the exparte decree is pending.

9. In view of the above observations, this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, this civil revision petition is dismissed. However, the

petitioners are at liberty to re-present the petition to set aside the final decree passed in IA.No.826 of 2012 within a period of two weeks from the date of receipt of copy of this order and the trial court is directed to dispose of the same on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No order as to costs.

29.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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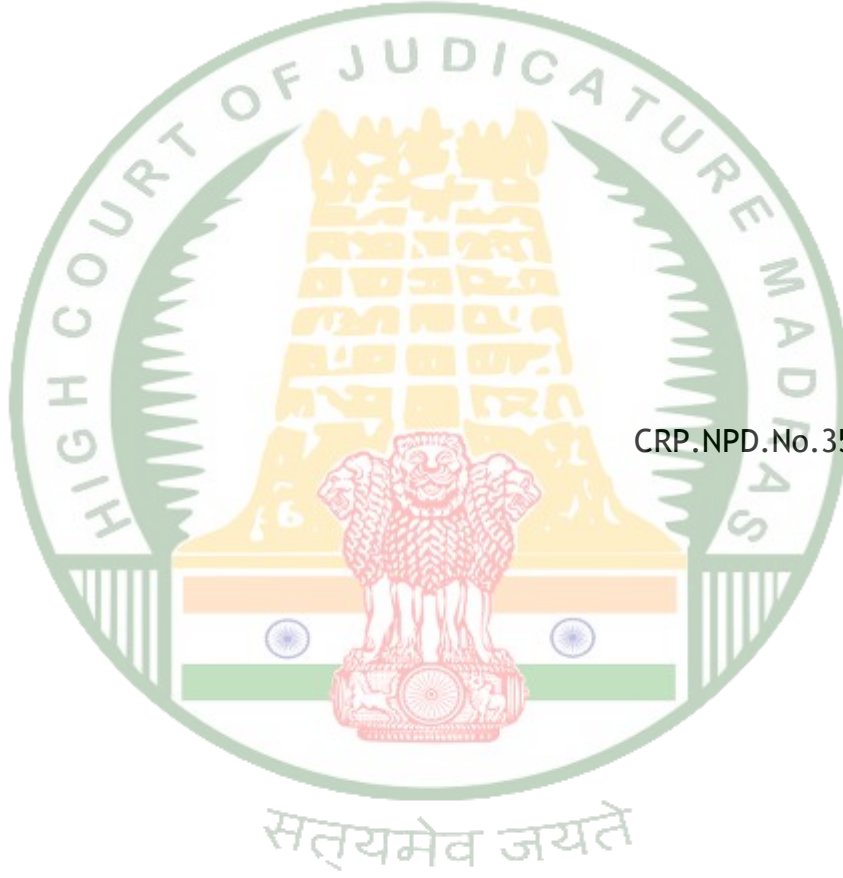
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G.K.ILANTHIRAIYAN,J.

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To

The District Munsif
of Krishnagiri



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