

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM

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

C.R.P.(NPD) No.4193 of 2015
and C.M.P.No.9839 of 2016

Samanthi Petitioner

Vs.

Pachaiyammal ... Respondent

Prayer :- Civil Revision Petition is filed under Section 112 of C.P.C., to set aside the fair and decreetal order in I.A.No.4 of 2015 in O.S.No.5 of 2011 dated 02.07.2015 passed by the learned Subordinate Judge, Cheyyar, Thiruvannamalai District.

For Petitioner : Mr.V.Vijayarajan

For Respondent : Mr.Harish
For Mr.N.Manoharan

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 02.07.2015 passed by the learned Subordinate Judge, Cheyyar, Thiruvannamalai District in I.A.No.4 of 2015 in O.S.No.5

of 2011, thereby dismissing the petition filed by the petitioner to condone the delay of 347 days in filing the petition to set aside the exparte decree.

2. The petitioner is the first defendant in the suit filed by the respondent herein for partition. In that suit, the petitioner appeared through her counsel and also filed her written statement. Thereafter, before the trial Court she failed to appear as such, she was set exparte and exparte decree was also passed. In the final decree application, the petitioner received notice on 15.10.2014 and immediately on 16.10.2014, she filed 2petition to set aside the exparte decree along with the condone delay petition to condone the delay of 347 days in filing the petition to set aside the exparte decree. The trial Court dismissed the above said petition as such the present Civil Revision Petition.

3. On perusal of the affidavit filed in support of the condone the delay petition, it revealed that on 25.09.2013, the petitioner was absent due to her illness and thereafter she could not be able to contact her counsel as such she was set ex-parte. On perusal of the written statement filed by her,

the suit property was already sold to one Appadurai S/o. Narayanasamy Gounder by a registered sale deed dated 20.02.1996. Therefore, the suit property cannot be subjected for partition. Considering the above facts and circumstances, this Court feels that one more opportunity may be given to the petitioner for put forth her case.

4. Accordingly, the order dated 02.07.2015 passed by the learned Subordinate Judge, Cheyyar, Thiruvannamalai District in I.A.No.4 of 2015 in O.S.No.5 of 2011 is hereby set aside on condition that the petitioner shall pay a sum of Rs.5,000/- (Rupees five thousand only) as cost to the respondent herein within a period of two weeks from the date of receipt of a copy of this Order, failing which the order shall stand automatically cancelled without further reference to this Court and on such payment, the trial Court is directed to complete the trial within a period six months thereafter. The petitioner is also directed to co-operate with the trial to complete the same.

5. With the above directions, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous is closed.

19.01.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts



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To

1. The Subordinate Judge,
Cheyyar,
Thiruvannamalai District.

2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

rts



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