

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2021

CORAM

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

CRP.NPD.No.2314 of 2017

- 1.A.K.Srinivasan(died)
- 2.A.S.Sridharan
- 3.A.S.Ramesh
- 4.Shanthi
- 5.R.Geetha
- 6.R.Anusuya
- 7.D.Booma
- 8.Minor Radha

Rep. by mother and guardian

AS.Jayasree

(petitioners 2 to 8 brought on record as LR's
of the deceased sole petitioner viz.,
AK.Srinivasan vide court order dated
27.02.2020 made in CMPs 14007, 4867,
4870 of 2020 in CRP.No.2314 of 2017

..Petitioners

Vs.

- 1.A.K.Kannan(died)
- 2.A.K.Santhanaraghavan
- 3.A.K.Ranganathan
- 4.A.K.Devanathan
- 5.A.K.Amirthavalli
- 6.A.K.Seshadri
- 7.A.K.Vasumathi
- 8.A.K.Murali
- 9.A.K.Aravamudhan
- 10.A.K.Nalini

(RR5 to 10 brought on record as LR's of the
deceased 1st respondent viz. A.K.Kannan
vide Court order dated 27.02.2021

made in CMPs 14007, 4867, 4868 & 4870
of 2020 in CRP.No.2314 of 2017
..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the CPC against the fair and decreetal order dated 13.03.2017 made in IA.No.475 of 2015 in IA.No.225 of 2013 in OS.No.355 of 2009 on the file of the Principal District Judge of Kanchipuram at Chengalpattu.

For Petitioners : Mr.M.S.Subramanian

For Respondents

R1 : Died (steps taken)

For R2 : Mr.M.B.Raghavan

for Mr.M.B.Gopalan Associates

R3 to 10 : Mr.V.Raghupathi

ORDER

The civil revision petition is directed as against the fair and decreetal order dated 13.03.2017 made in IA.No.475 of 2015 in IA.No.225 of 2013 in OS.No.355 of 2009 on the file of the Principal District Judge of Kanchipuram at Chengalpattu thereby dismissing the petition to condone the delay of 500 days in filing the set aside the exparte final decree petition.

2. The first petitioner is the second defendant in the suit filed by the first respondent herein for partition on 10.12.2009. On 14.06.2010, written statement was filed. After contesting the suit, it was decreed on 28.08.2012. Thereafter on 21.03.2013, the first respondent filed petition for final decree in IA.No.225 of 2013. In the said petition, Advocate Commissioner was appointed and he filed his report on 20.09.2013. Accordingly on 31.10.2013, final decree was passed.

3. On perusal of advocate commissioner's report dated 20.09.2013, at the time of visiting the suit schedule property item Nos.1,4,5,6 and 7, the petitioner was not present with him and other defendants were present and identified the properties. In respect of items 2 and 3 are concerned, DW2 was present and he requested to allot item 2 and 3 to him and no share may be allotted to him in the item No.1. As the valuation wise, Commissioner apportioned the suit items with the respective shareholders. Therefore the petitioner was present at the time of visiting item Nos.2 and 3 of the suit schedule property. In accordance with the final decree dated 31.10.2013, for delivery of possession the first respondent filed execution petition. After receipt of notice in the execution petition, the petitioner did not appear before the execution court. In fact,

the petitioner was set ex parte in the original suit and also he did not file petition on the advocate commissioner's report. All along, he had no objection for the preliminary decree passed in the partition suit as well as the advocate commissioner's report and in the execution proceedings also he received notice and did not appear before the execution court. Therefore, the petitioner was set exparte before the execution court on 31.10.2013. After 500 days of delay, the petitioner came forward with the petition to set aside the exparte order passed in execution petition.

4. On perusal of the affidavit filed in support of the condone delay petition, the petitioner stated that his son Sriram died on 19.02.2013, because of the shock, he was not able to look after his case. He is an aged person. On perusal of the records revealed that the petitioner was set exparte in the main suit itself. The exparte preliminary decree was passed. Aggrieved by the same, the petitioner did not prefer any appeal suit. Thereafter in the final decree application, he was set exparte and thereafter the first respondent filed execution petition in which he received notice. EP is of the year 2014 and it was filed on 30.06.2014. Even the petitioner failed to file any petition to set aside the exparte final decree immediately after receipt of the notice in the

execution petition. Though the affidavit filed in support of the condone delay petition was signed by the petitioner on 01.12.2014, the condone delay petition was filed only on 15.04.2015. The reasons stated in the affidavit is bald and vague. No sufficient cause stated for each and every day delay.

5. That apart, the petitioner was very much present at the time of inspection of the advocate commissioner in respect of the suit schedule property item No.2 and 3. Therefore, at the time of advocate commissioner's visit, the petitioner had very much knowledge about the appointment of advocate commissioner and he had knowledge about the final decree proceedings. Even then, he failed to appear before the final decree. Further, the petitioner's son died on 19.02.2013, whereas the petition was filed only on 15.04.2015. In fact, he was examined as PW1 in the condone delay petition and he deposed that he received notice for his appearance on 12.04.2013 in the final decree application. Therefore, the court below rightly dismissed the petition to condone the delay of 500 days as no valid ground to condone the inordinate delay. As such , this Court finds no irregularity or infirmity in the order passed by the court below.

6. Accordingly, the civil revision petition is dismissed. No order as to costs.

18.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

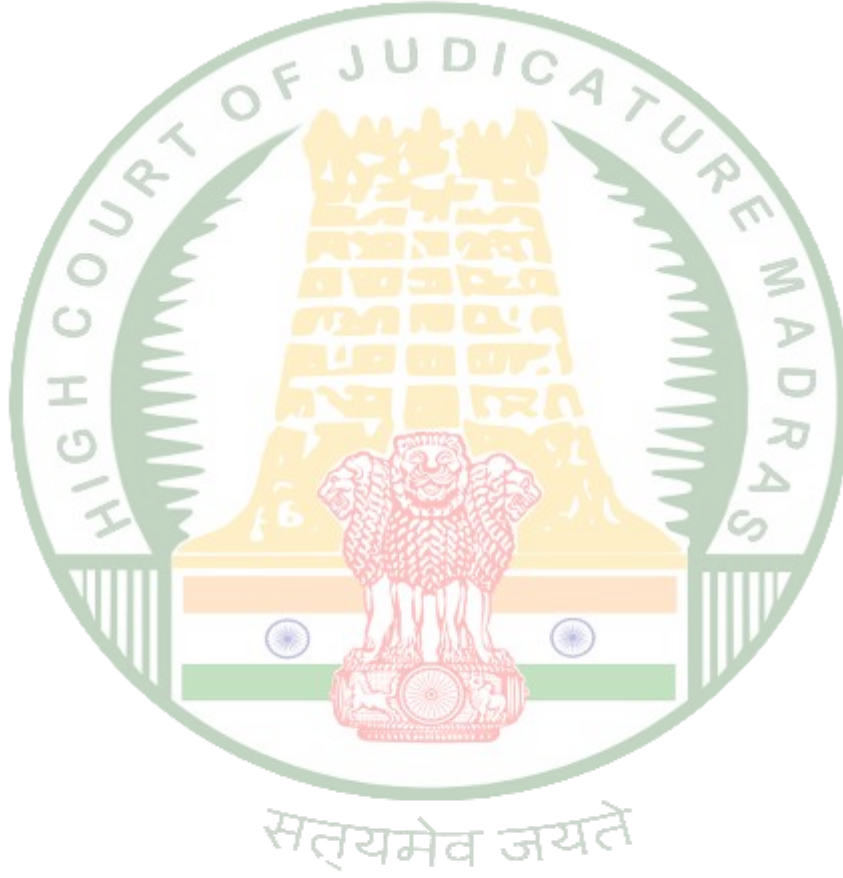
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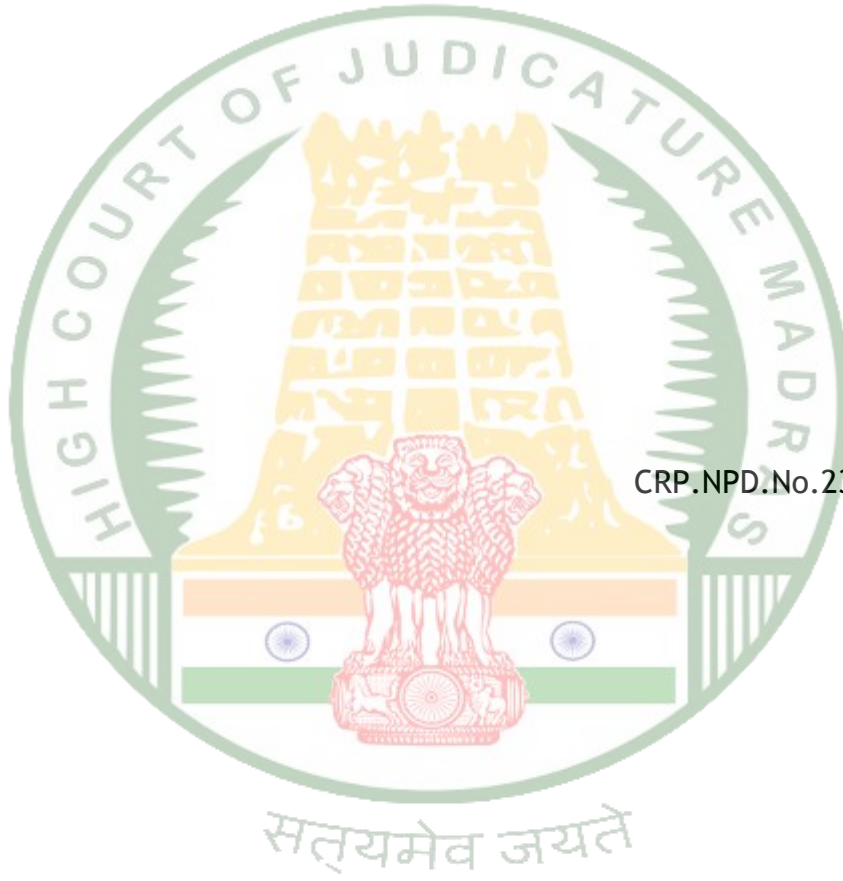
The Principal District Judge of
Kanchipuram at Chengalpattu.



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G.K.ILANTHIRAIYAN,J.

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