

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.819 of 2021

and

C.M.P.No.6793 of 2021

Periyannan (died)

1.Sivanandam

2.Chinnasamy

3.Chinnadurai

4.Sivaprakasam

..

3rd defendant

..

Petitioners/Petitioners/
Proposed defendants

Vs

Sivagami

..

Respondent/Respondent/
Plaintiff

Civil Revision Petition filed under Article 227 of Code of Civil Procedure to set aside the fair and decretal order dated 20.01.2021 passed in I.A.No.435 of 2017 in O.S.No.96 of 2011 on the file of Sub Court, Harur, Dharmapuri District.

For Petitioner

..

Mr.P.Muthusamy

For Respondent

..

No appearance

ORDER

This Revision Petition has been filed questioning the order dated 20.01.2021 passed in I.A.No.435 of 2017 by the learned Subordinate Judge, Harur in O.S.No.96 of 2011.

2.The petitioners are the legal heirs of the deceased 3rd defendant in the suit. The 3rd defendant died on 13.11.2015. The 1st defendant died on 17.06.2014.

3.The suit had been filed by the plaintiff to set aside the Sale Deed which according to the plaintiff had been executed with sole intention to defraud her and also for partition of the suit property and for consequential reliefs.

4.The defendants have been very lax in participating in the judicial proceedings. The reasons are known only to them. As stated, the 1st defendant died on 17.06.2014 and the 3rd defendant died on 13.11.2015. Even when the 3rd defendant was alive he had filed I.A.No.396 of 2014 to set aside the exparte decree. That application was dismissed for default. Steps have not been taken to restore the application. Thereafter, the present petitioners in their capacity as

legal heirs of the 3rd defendant had filed I.A.No.435 of 2017 in O.S.No.96 of 2011 seeking to condone the delay of 1599 days in filing the petition to set aside the exparte decree.

5.This came up for consideration before the learned Subordinate Judge, Harur, who by an order dated 20.01.2021 dismissed the said application. In the course of the order, the learned Judge had stated that though the earlier application had been dismissed for non-prosecution, no steps have been taken to restore the same. It had also been stated that the reasons stated to condone the delay could not be accepted. As a matter of fact, no convincing reason had been advanced to condone the delay.

6.I do not find any reasons to interfere with the said order.

7.It is the contention of the learned counsel for the petitioner that the suit itself is not maintainable. A decree has been passed by a competent court. That decree had been invited by the present petitioners owing to their refusal to participate in the judicial proceedings.

8. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed. However, liberty is granted to the petitioners to take up necessary application to set aside the ex parte order in I.A.No.396 of 2014.

9. I am confident that the learned Subordinate Judge, Harur, would take up any such said application only on merits and examine the issues purely on the basis of affidavit filed in support of such application. The learned Judge may not be influenced by the fact that liberty had been granted by this Court. He/She may apply his mind judiciously and pass necessary orders.

08.04.2021

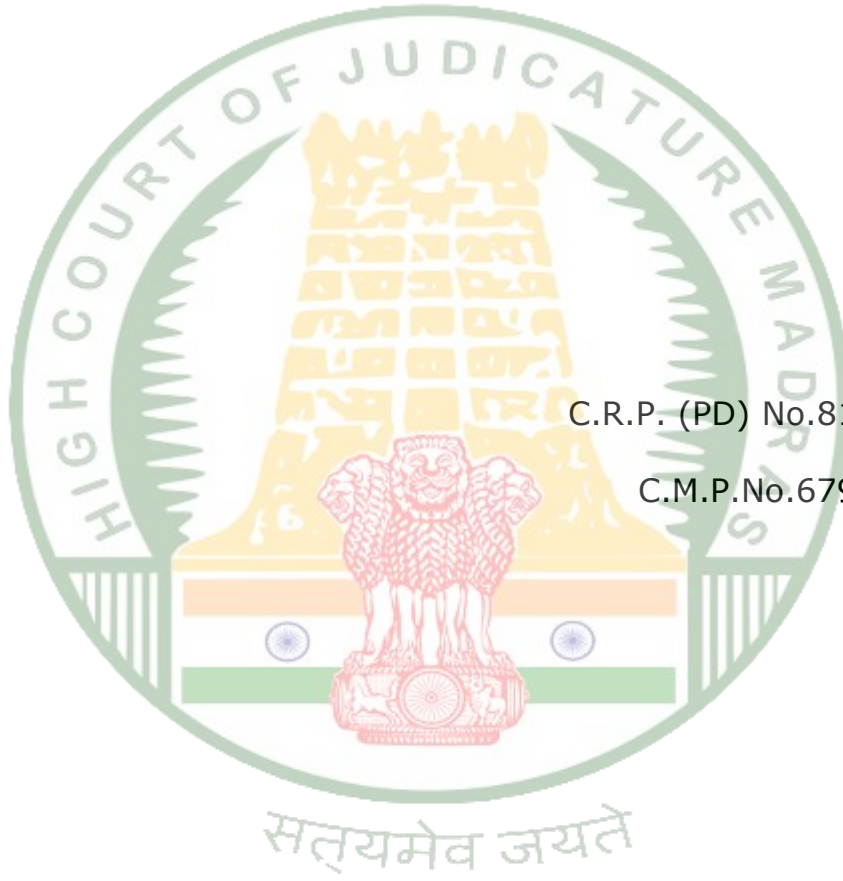
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To
The Subordinate Court,
Harur.

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C.V.KARTHIKEYAN,J.

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