

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

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

CRP.NPD.No. 1665 of 2016

1. Ponni
2. Gomathy
3. Shanmugasundaram
4. Ramanathan

... Petitioners

Vs.

Nirmala

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of Civil Procedure Code praying to set aside the fair and decretal order dated 03.03.2015 in I.A.No.188 of 2014 in un-numbered A.S.No. of 2014, on the file of the Principal District Court, Salem.

For Petitioners : Mr.R.Subramanian

For Respondent : M/s.Indira for
Mr.N.Manokaran

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ORDER

This Criminal Revision Petition is arising out of fair and decretal order in I.A.No.188 of 2014 in un-numbered A.S.No. of 2014, dated 03.03.2015 on the filed of the Principal District Court, Salem, thereby, dismissing the petition filed for condoning the delay of 105 days in filing the appeal suit.

2. The petitioners are the defendants in the suit filed by the respondent herein for partition. The respondent claimed 1/5th share in the suit schedule properties. The suit was decreed as prayed for. Aggrieved by the same, the petitioners/defendants filed appeal suit with the delay of 105 days in filing the appeal. They filed an affidavit in support of the petition for condoning the delay, in which they stated the reason that the first petitioner suffered with jaundice and as such, she taken native treatment, due to which the appeal could not be filed in time.

3. The respondent filed counter affidavit stating that the petitioners already filed the suit in O.S.No.325 of 2007 for the relief of partition on the file of the Additional Sub Judge II, Salem and the same was dismissed by

the judgment and decree dated 02.06.2011. Aggrieved by the same they were also prepared in appeal suit in O.S.No.94 of 2012 and the same was also dismissed for default. Therefore, they wantonly failed to file the present appeal in time. The appeal filed with the petition to condone delay was only drag the proceedings and nothing else.

4. Considering the counter affidavit filed by the respondent, the Court below dismissed the petition to condone the delay of 105 days on the ground that the reasons stated by the petitioners are not satisfactory and they failed to show sufficient cause for the delay. Further, it was recorded that the petitioners 2 to 4 also did not take any steps to file an appeal in time. Though, the petitioners 2 to 4 did not file any separate appeal in time they filed the appeal suit along with the first petitioner. The first petitioner suffered with Jaundice and she had taken native treatment and as such, she could not able to file the appeal suit in time. Therefore, the petitioners may be given opportunity to file their appeal. It is also seen that even till today the respondent did not file any petition for final decree.

5. In view of the above discussion, this civil revision petition is allowed and the order passed in I.A.No.188 of 2014 in un-numbered A.S.No. of 2014 dated 03.03.2015 is set aside. The Court below is directed to number the appeal suit and dispose the same within a period of six months from the date of receipt of a copy of this order and also fix a time.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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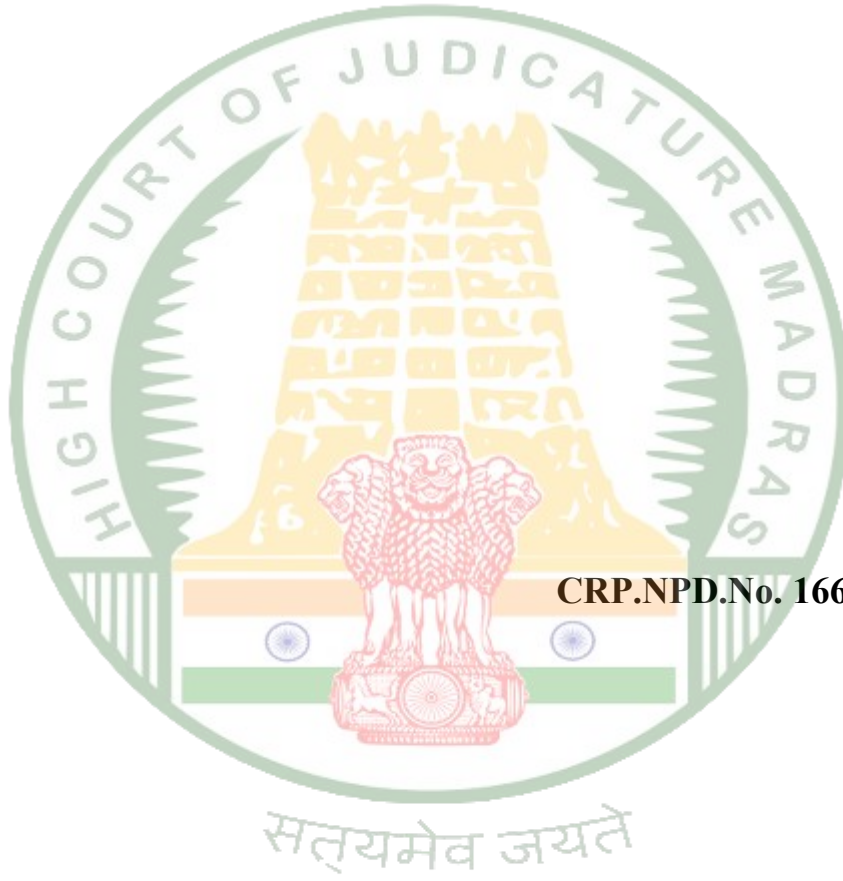
To

The Principal District Court, Salem.

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G.K.ILANTHIRAIYAN,J.

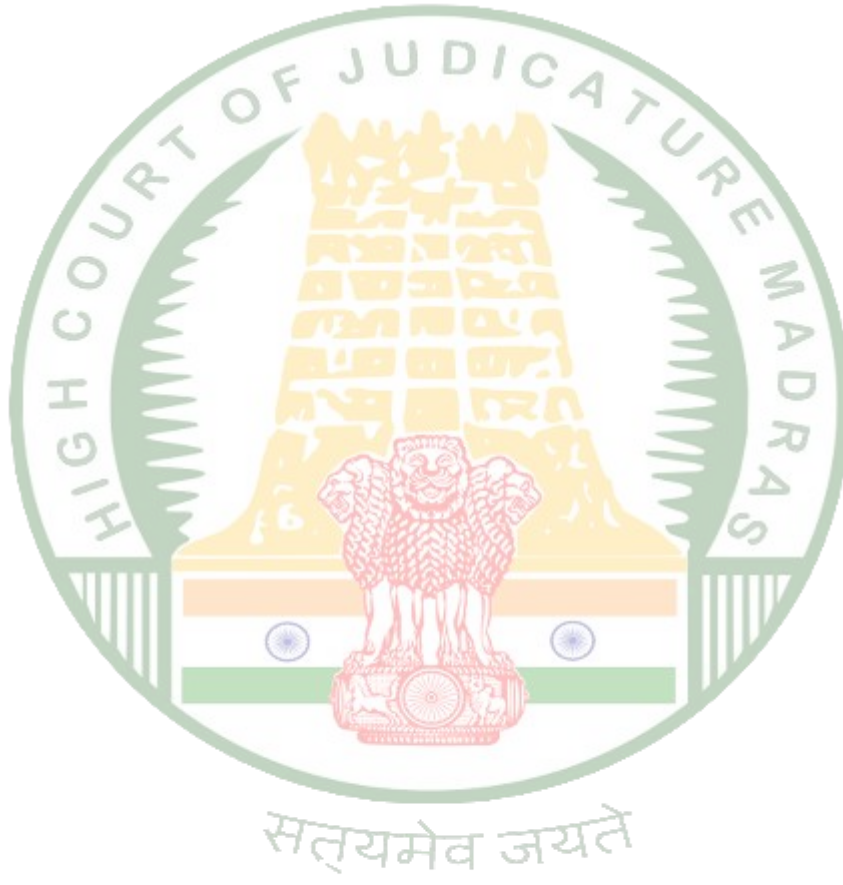
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