

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2021

CORAM

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

CRP.NPD.No.2112 of 2016 and
CMP.No.11053 of 2016

Suseeladevi

..Petitioner

Vs.

1.K.Balasubramani
2.K.Selvaraj

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order of the I Additional District Munsif's Court at Erode dated 11.02.2016 in IA.No.315 of 2014 in OS.No.488 of 2012.

For Petitioner : Mr.P.Valliappan

For Respondents : Mr.S.Kaithamalai Kumaran

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ORDER

This civil revision petition is directed as against the fair and decreetal order of the I Additional District Munsif's Court at Erode

dated 11.02.2016 in IA.No.315 of 2014 in OS.No.488 of 2012 thereby dismissing the petition to condone the delay in filing the set aside the exparte decree petition.

2. The petitioner is the defendant in the suit filed by the respondents for declaration and injunction in respect of the suit property. The petitioner did not appear before the trial court and failed to file her written statement. Therefore, she was set exparte on 22.04.2013. Thereafter, she came to understand about the exparte decree passed against her and filed petition to set aside the exparte decree with delay of 75 days in filing the petition.

3. On perusal of the affidavit filed in support of the condone delay petition, the petitioner stated that there was settlement talks between herself and the respondents since they are none other than her own brothers. Therefore, she was under impression that the suit will be withdrawn by the respondents. Whereas the respondents filed counter and they also examined RW1 and marked Ex.D1 to D3. Ex.D1 to D3 revealed that pending the suit filed by the respondents as against the petitioner, the petitioner also filed suit for partition in OS.No.105 of 2013 along with

temporary injunction and appointment of advocate commissioner. The interim application for appointment of advocate commissioner as well as interim injunction was pending till 02.12.2013 and thereafter it was disposed of.

4. It is pertinent to note here that the suit filed by the petitioner before the Sub Court, Erode, whereas the suit filed by the respondents before the District Munsif Court. Further, the petitioner did not state on which date there was negotiation between the petitioner and the respondents. Therefore, though she filed suit as against the respondents on the file of the Sub Court the present suit was pending on the file of the District Munsif Court. That apart, the delay is only 75 days in filing the set aside the exparte decree petition. Therefore, the petitioner may be given one more opportunity to defend the suit filed by the respondents on merits.

5. In view of the above, the civil revision petition is allowed and the order of the I Additional District Munsif's Court at Erode dated 11.02.2016 in IA.No.315 of 2014 in OS.No.488 of 2012 is set aside on condition that the petitioner shall pay a sum of Rs.5,000/- (Rupees Five

Thousand only) to the respondents directly within a period of two weeks from the date of receipt of copy of this order, failing which the present civil revision petition shall stand automatically dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

18.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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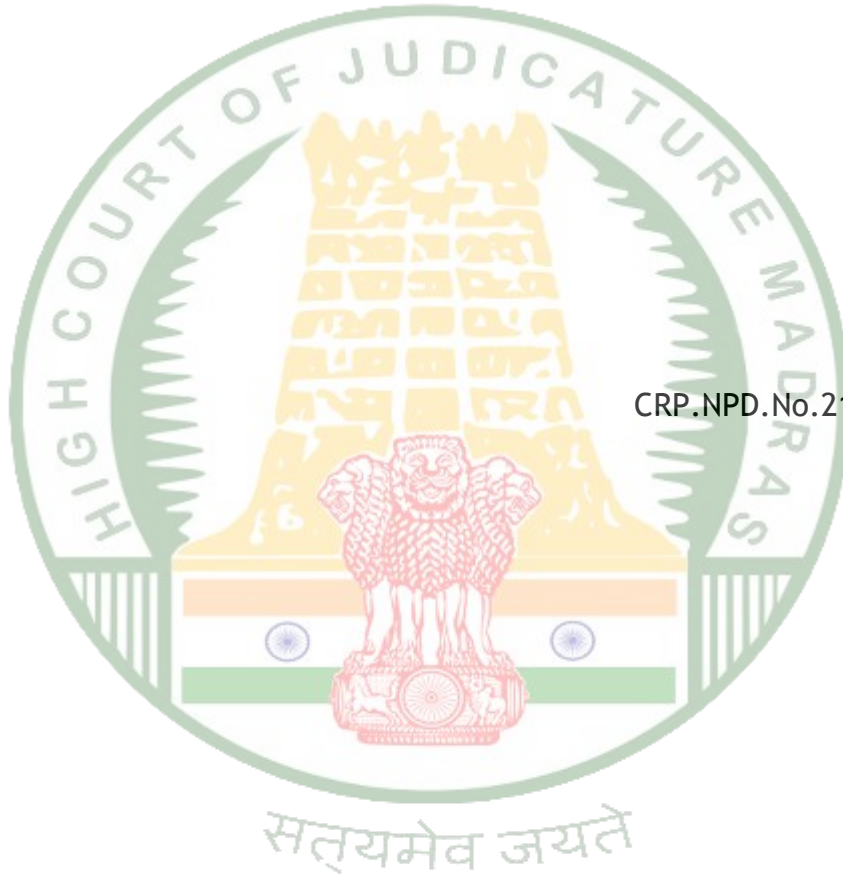
The I Additional District Munsif,
Erode



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G.K.ILANTHIRAIYAN,J.

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18.02.2021