

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM

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

CRP.NPD.No.2249 of 2016

and

CMP.No.11673 of 2016

Varadaraju

... Petitioner

Vs.

Muniramappa

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set side the order of the learned Subordinate Judge of Hosur, Krishnagiri dated 09.09.2015 in I.A.No.99 of 2013 in O.S.No.47 of 2009.

For Petitioner

: Mr.Vignesh for

: Mr.V.Nicholas

For Respondent

: Mr.G.M.Anantha Kumar

WEB COPY

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.99 of 2013 in O.S.No.47 of 2009 dated 09.09.2015 on the file of the learned Subordinate Judge, Hosur, Krishnagiri, thereby, dismissing the petition to condone the delay of 205 days in filing the application to set aside the ex-parte decree.

2. The petitioner is the third defendant in the suit filed by the respondent herein for specific performance, on the strength of un-registered agreement for sale dated 10.11.2005. After filing a written statement by the second defendant all the defendants failed to appear before the trial Court and they were set ex-parte. Thereafter, the ex-parte decree was passed on 11.04.2012. The petitioner filed a petition to set aside the ex-parte decree with a delay of 205 days in filing the application to set aside the ex-parte decree. The Court below dismissed the same on the ground the first defendant is the grandfather, the second defendant is the father and the third defendant is the petitioner herein. They filed a petition to set aside the ex-parte decree with a delay in I.A.No.306 of 2012 and the same was dismissed by the Court below. In fact, they also filed a petition in I.A.No.532 of 2012

under Order 9 Rule 4 of the Code of Civil Procedure and the same was also dismissed. When the petitioner is also residing with the second and third defendants, he had knowledge about those applications and conveniently he did not file a petition to set aside the ex-parte decree. After dismissal of those petitions, the petitioner has come forward with the petition to set aside the ex-parte decree with a delay of 205 days.

3. On a perusal of the affidavit filed in support of the condone delay petition and also the deposition of P.W.1, it reveals that he does not know about the applications filed by his father and grandfather. In fact, on 15.01.2005, the first defendant viz., his grandfather died. Further, he also no knowledge about the counsel engaged on behalf of the first and second defendants in the suit. Even assuming that the petitioner is also residing in the same roof along with other defendants viz., the defendants 1 and 2, it does not mean that he had knowledge about the petitions filed by other defendants. The petitioner is also one of the executors to the agreement for sale and as such, he may be given opportunity to defend the case. Since it is a suit for specific performance, that too for agricultural land. Therefore, the order passed by the trial Court is perverse and illegal and it is liable to be

set aside.

4. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.99 of 2013 in O.S.No.47 of 2009 dated 09.09.2015 is set aside on condition that the petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent within a period of two weeks from the date of receipt of a copy of this order, failing which, this order shall stand automatically cancelled. On such deposit, the trial Court is directed to set aside the ex-parte decree and to dispose of the suit within a period of six months thereafter. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

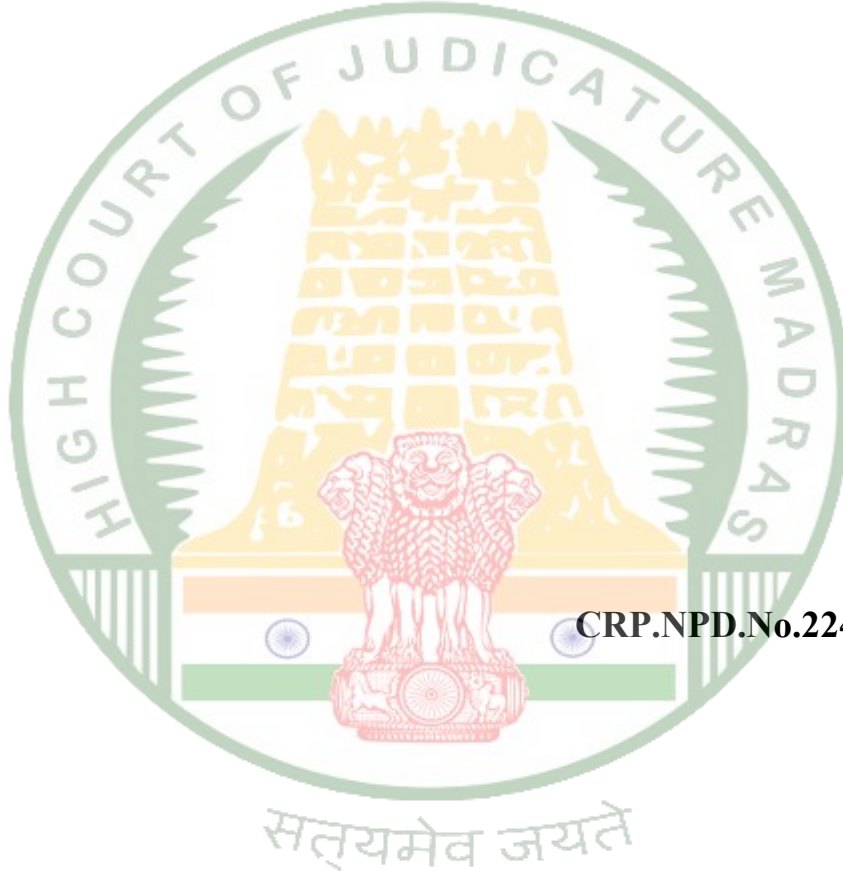
kv

To

1. The Subordinate Judge, Hosur, Krishnagiri
2. The Section Officer,
V.R.Section, High Court of Madras.

G.K.ILANTHIRAIYAN,J.

kv



CRP.NPD.No.2249 of 2016

WEB COPY

22.03.2021



WEB COPY