

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

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

CRP.NPD.No. 2369 of 2016

and

CMP.No.12227 of 2016

P.Subramani

... Petitioner

Vs.

S.Vanaja

... Respondent

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decretal order ated 06.04.2016 made in E.A.No.121 of 2016 in E.P.No.53 of 2015 in O.S.No.441 of 2008 on the file of 1st Additional Sub Court, Erode and allow the above CRP.

For Petitioner : Mr.M.V.Venkataseshan

For Respondent : Mr.C.E.Pratap

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in E.A.No.121 of 2016 in E.P.No.53 of 2015 in O.S.No.441 of 2008 dated 06.04.2016 on the file of the learned 1st Additional Sub Court, Erode, thereby, dismissing the petition to condone the delay in filing the

application to set aside the ex-parte decree passed in the Execution Petition.

2. The respondent is the plaintiff and the petitioner is the second defendant in the suit filed by the respondent herein for partition and permanent injunction. The petitioner contested the suit and the suit was decreed. As per the judgment and decree, the respondent was allotted 1/6th share in the suit schedule properties. Thereafter, the petitioner did not file any appeal suit and the respondent filed a final decree application and the same was also allowed on 30.04.2014. An Advocate Commissioner was appointed and the properties were divided and on the strength of the same, the respondent filed the Execution Petition for delivery of possession. The delivery of possession was also ordered. At that juncture, the petitioner filed a petition to set aside the ex-parte order passed in the Execution Petition with a delay of 39 days.

3. On a perusal of the affidavit filed in support of the condone delay petition, the petitioner stated that he appeared in the final decree application and also objected to the Advocate Commissioner's report. Thereafter, from the month of November 2015 onwards, he suffered with Jaundice and as

such, he was unable to meet his counsel. Therefore, he was set ex-parte before the Execution Court. From which date he suffered from Jaundice and which date he had taken treatment for Jaundice, nothing is stated in the affidavit. Further, he had knowledge about the passing of the final decree on 30.04.2014. The properties were also already divided and the Execution Petition itself was filed only for delivery of possession. At this juncture, the petitioner come forward with the petition to set aside the ex-parte order passed in Execution Petition that too without stating any sufficient cause for the delay of 39 days in filing the application to set aside the ex-parte order. Therefore, this Court finds no irregularity or illegality in the order passed by the Court below.

4. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

सत्यमेव जयते

16.02.2021

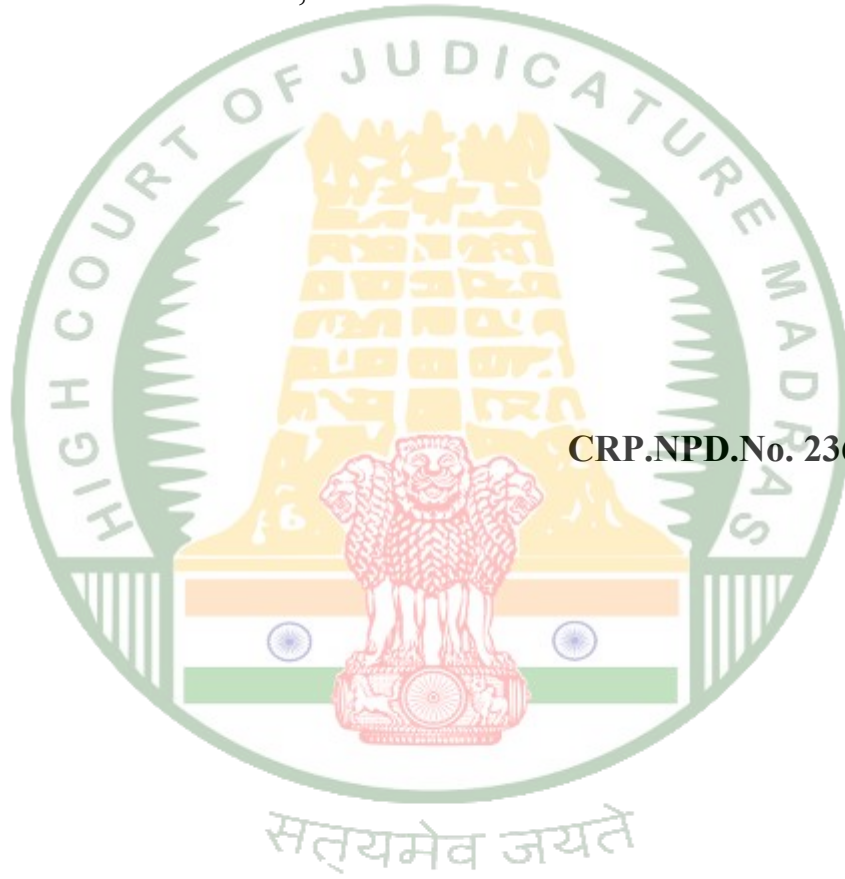
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN,J.

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To

The 1st Additional Sub Court, Erode.



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