

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM

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

CRP.NPD.No.2830 of 2016

and

C.M.P.No.14370 of 2016

Shyamala

... Petitioner

Vs.

1. Anjinamma
2. Chandira Reddy
3. Chinnamma

.... Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order dated 06.06.2016 passed in I.A.No.86 of 2014 in O.S.No.16 of 2009 on the file of the Sub Court, Hosur.

For Petitioner : Mr.P.Mani

For Respondents : Mr.Thirumalai Balaji for
: Mr.P.Subba Reddy (for R1)
: Notice Served (for R2 & R3)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.86 of 2014 in O.S.No.16 of 2009 dated 06.06.2016 on the file of the learned Sub Judge, Hosur, thereby, dismissing the petition to condone the delay in filing the application to set aside the ex-parte decree.

2. The petitioner is the third defendant in the suit filed by the first respondent herein for partition. The suit summons were duly served to the petitioner herein. Thereafter, she enquired with the first respondent and she assured that she will take care of her share. Believing the said word, she failed to appear before the trial Court. In fact, she also contacted her brothers viz., other defendants in the suit and they refused to give any particulars about the suit filed by the first respondent for partition. Therefore, without getting any details or particulars about the suit filed by the first respondent, the petitioner filed another suit for partition in O.S.No.98 of 2012 on 16.12.2012. While pending the suit, the defendants in the said suit filed a written statement and thereafter, the petitioner came to

understand about the ex-parte decree passed in the partition suit filed by the first respondent herein. She also verified that the earlier partition suit filed only in respect of one property and all the joint family properties are not included. Therefore, she filed the suit for partition including all the joint family properties. Thereafter, she filed a petition to set aside ex-parte decree with a delay of 1,534 days in filing the application to set aside the ex-parte decree.

3. The learned counsel for the petitioner submitted that the petitioner also filed a suit for partition in O.S.No.98 of 2012 and as such, it would be hit principals of res-judicata and as such, she has to necessarily contest the earlier suit filed by the first respondent herein for partition.

4. On a perusal of the affidavit filed in support of the condone delay petition, it reveals that she received the suit summons and she contacted the first respondent. Thereafter, she also contacted her brothers who were other defendants in the suit. Therefore, she had knowledge about the earlier suit and only on the assurance given by the first respondent, she did not appear before the Court below. Even, assuming that those averments are true, who

instigated the petitioner to file another suit for partition in O.S.No.98 of 2012, that too without verifying the earlier suit proceedings and without appearing before the earlier suit, she simply filed another suit for partition by including all the joint family properties. Therefore, she had knowledge about the earlier suit and as such, she failed to show sufficient cause for the huge delay of 1,534 days. Therefore, the Court below rightly dismissed the petition to condone the delay of 1,534 days and this Court finds no infirmity or irregularity in the order passed by the Court below.

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

24.03.2021

Speaking/Non-speaking order

Index : Yes/No

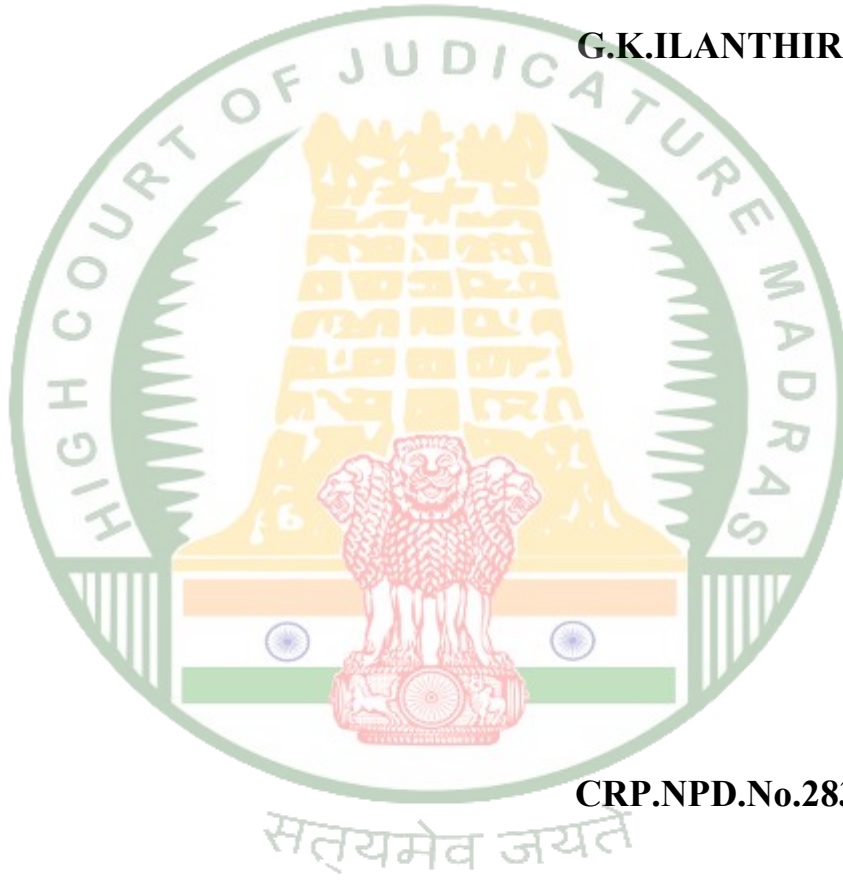
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To

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

G.K.ILANTHIRAIYAN,J.

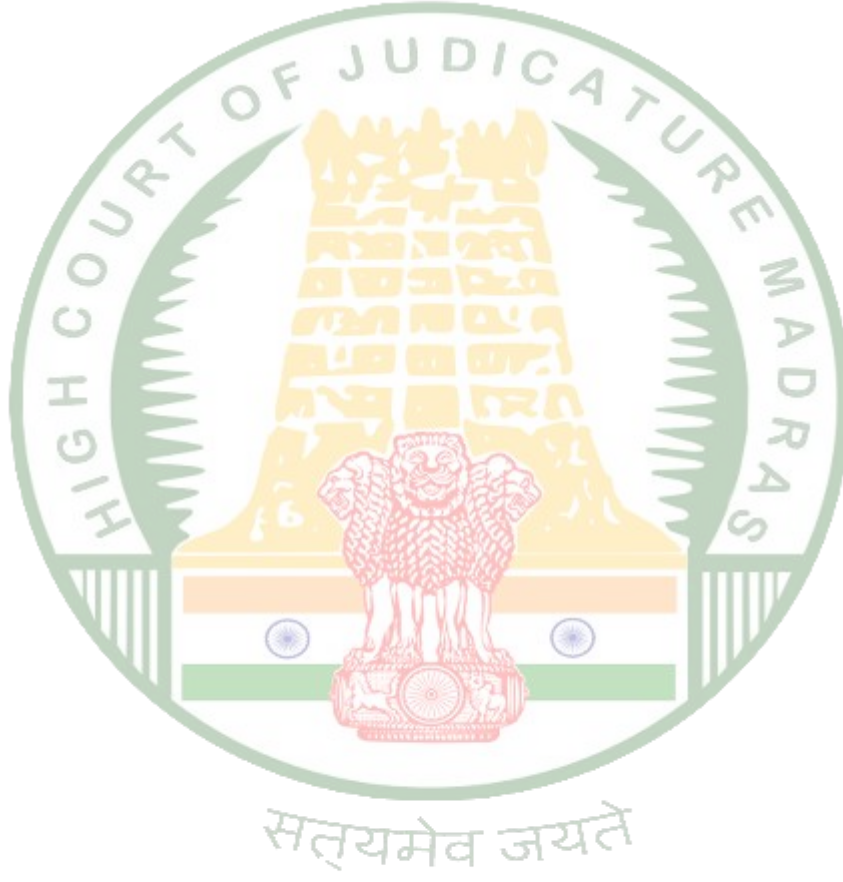
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