

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.2921 of 2016

1.Uthathal

Sivamani (died)

2.Duraisamy

... Petitioners/ Petitioners 1 & 3/

1st plaintiff & L.R. Of the 2nd Plaintiff

Vs.

Govindathal (died)

1.Thayathal

2.Jagadeesu

3.Sarangapani

4.Rathinasamy

5.Krishnakumar

... Respondents /Respondents 2 to 6 /
D2, D3 & L.Rs of the 1st Defendant

PRAYER : The Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 26.08.2015 made in I.A.No.291(A) of 2013 in O.S.No.166 of 2007 on the file of the learned District Munsif Court, Kangayam.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.P.Navaneethakrishnan for RR1 & 2

: No appearance for RR3 to 5

ORDER

(Heard through video conferencing)

This Civil Revision Petition has arisen out of the order of dismissal of the learned District Munsif Court, Kangayam, dated 26.08.2015 passed in I.A.No.291(A) of 2013 in O.S.No.166 of 2007.

2. Heard the arguments made by the learned counsel for the petitioner. The learned counsel for the respondents 1 and 2 are present. Despite notice were served on R3 to R5 and also their names were printed in the cause list, none appeared on behalf of Respondents 3 to 5.

3. The petitioners are the plaintiffs and the respondents are the defendants in the above said suit. The petitioners have filed a title suit which was later dismissed for default due to non prosecution. Later the petitioners have filed a petition to restore the suit, but it was returned for certain defects to be complied with. Thereafter the petition was not represented and there occurred a delay of 1125 days in representing the same. The petitioners have filed a petition to condone the delay of 1125 days in representing the petition by stating that the petition got mingled with the other case records in the office of the counsel for the plaintiffs and the same could not be traced out of for long.

4. The learned trial Judge has not opted to accept the reason stated by the

petitioner. In all petitions filed to condone the delay in representation the very same reason will be stated. But however the petitioners being the plaintiff will not self-sabotage his own right by telling false reasons before the Court. However, the delay in getting the suit disposed on merit would affect the interest of the petitioners as well.

5. In such circumstance and in the interest of justice, I feel that an opportunity may be given for considering the petition filed under Order 9 Rule 9 on merits by condoning the delay in representation. While doing so, the hardship caused on the defendants in re-agitating the matter after several years cannot be overlooked. Since the petitioners have caused the delay, they are liable to pay the cost to the contesting respondents. Hence I feel that this petition can be allowed on terms.

6. Accordingly, the order of dismissal of the learned District Munsif Court, Kangayam, dated 26.08.2015 passed in I.A.No.291(A) of 2013 in O.S.No.166 of 2007 is hereby set-aside and this Civil Revision Petition is **allowed** and on the condition that the petitioner shall pay a cost of Rs. 2,500/- [Rupees Two thousand and five hundred only] to each of the contesting Respondents 1 and 2 and Rs.1000/- [Rupees One thousand only] to each of the Respondents 3 to 5, within a period of two weeks from the date of receipt of copy of this order, failing which,

R.N.MANJULA, J.
jrs

the benefit granted under this order, will automatically cease to operate without any further reference to this Court.

22.06.2021

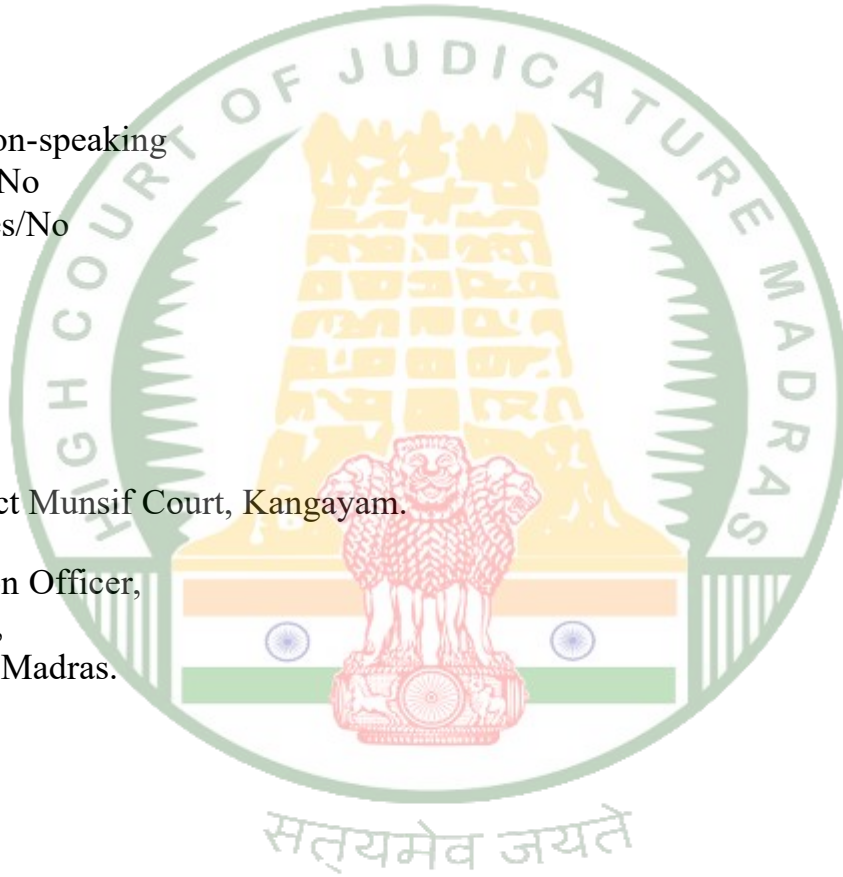
Speaking/Non-speaking
Index : Yes/No
Internet : Yes/No

jrs

To

1.The District Munsif Court, Kangayam.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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