

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.3809 of 2016
and C.M.P.No.19473 of 2016

Ramar

...Petitioner

Vs

1.Vasanthi
2.Palaniammal
3.Vijaya
4.Santhi
5.Venkatesan
6.Srinivasan
7.Padmavathi

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and decretal order passed in I.A.No.350 of 2013 in O.S.No.21 of 2008 dated 12.06.2015 on the file of the learned Sub-Judge, Kallakurichi.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.P.Valliappan

for R1 to R5

for R6&R7-notice served-NA

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.350 of 2013 in O.S.No.21 of 2008 dated 12.06.2015 on the file of the learned Sub-Judge, Kallakurichi, thereby

dismissing the petition to condone the delay in filing the setting aside exparte decree.

2.The petitioner is the 1st defendant in the suit filed by the respondents 1 to 5 herein for partition in respect of the suit schedule property. After filing the written statement, the petitioner failed to appear before the trial Court and as such he was set exparte on 06.08.2012 by the trial Court. Thereafter, the petitioner filed a petition to set aside the exparte decree with condone delay petition with a delay of 204 days in filing the petition. The trial Court dismissed the petition for the reason that the petitioner failed to explain the cause for the delay. The petitioner simply stated that he was suffering from Jaundice and he had taken country traditional treatment. But to prove the same, he did not produce any evidence.

3.On perusal of the records would reveal that the petitioner was already set exparte and it was set aside in I.A.No.50 of 2010 on payment of cost of Rs.500/-. Even then he failed to appear before the trial Court. Further, the suit is for partition among the family members. Therefore, he may be given one more opportunity to put forth his defence in the main suit.

4.Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 to 5. Even though notice served on the respondents 6 and 7, no one has appeared either by person or by their counsel.

5.In view of the above discussion, the order passed by the trial Court in I.A.No.350 of 2013 in O.S.No.21 of 2008 dated 12.06.2015 on the file of the learned Sub-Judge, Kallakurichi, is set aside on condition that the petitioner shall pay a sum of Rs.7,500/- directly to the respondents 1 to 5 within a period of two weeks from the date of receipt of a copy of this order, failing which the order stands canceled automatically.

6.Accordingly, the Civil Revision Petition is allowed. Consequently connected miscellaneous petition is closed.

03.02.2021

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Index: Yes/No

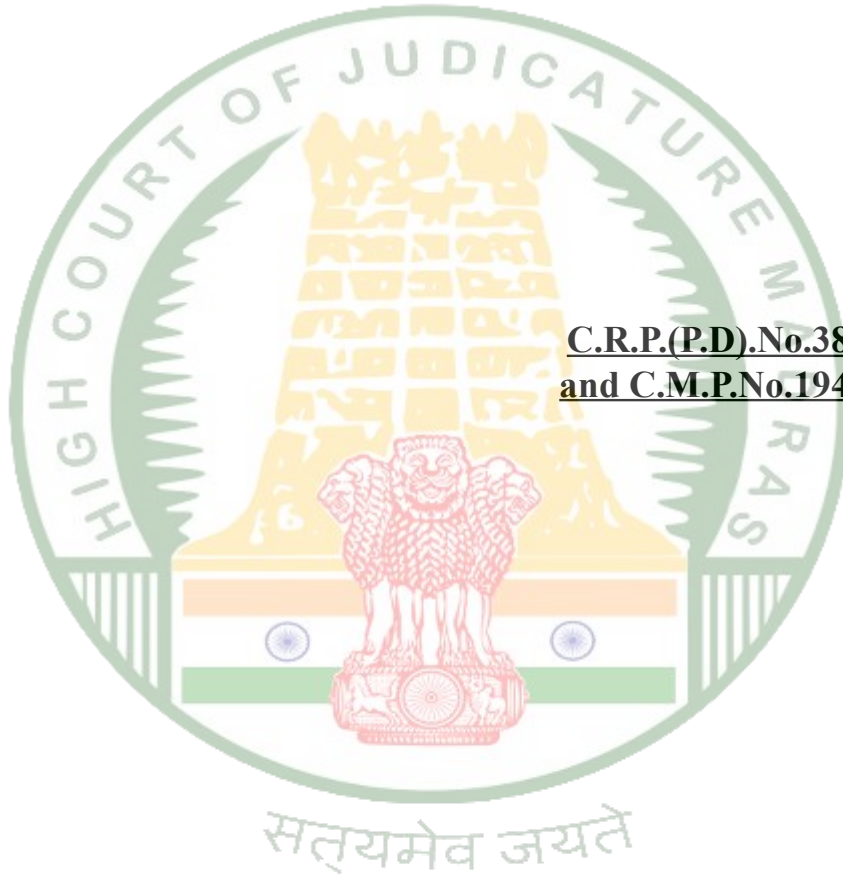
Internet: Yes/No

Speaking Order: Yes/No

G.K.ILANTHIRAIYAN.J,
Jer

**Note:Registry is directed to issue
order copy today, i.e., on 08.02.2021**

To
The Sub-Judge, Kallakurichi.



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