IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

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

C.R.P.(NPD) No.3993 of 2016
and C.M.P.No.20196 of 2016

G.Sampath Kumar ... Petitioner

Vs.

1. Arunachalam
2. Unnamalai
3. Kariyamalachi
   Elango (Died)
4. Pappa
5. Menaga
   The respondents 4 & 5 are impleaded as LRs of the deceased 4th respondent as per order in I.A.No.65 of 2014 dated 19.09.2014 and amended as per order in I.A.No.71 of 2014 dated 08.10.2014)

... Respondents

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Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decree order passed in I.A.No.28 of 2014 in unnumbered A.S. of 2014 dated 23.12.2014 on the file of the learned Principal Subordinate Judge, Salem.

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For Petitioner : Mr.R.Sunil kumar

O R D E R

This Civil Revision Petition has been filed as against the fair and decreetal order dated 23.12.2014 passed by the learned Principal Subordinate Judge, Salem in I.A.No.28 of 2014 in unnumbered A.S. of 2014, thereby dismissing the petition filed by the petitioner to condone the delay of 1100 days in filing the appeal suit.

2. The petitioner is the second defendant and the respondents 1 to 3 are the plaintiffs. The respondents 1 to 3 filed suit for partition in respect of the suit property. The suit was decreed on 29.10.2010 as the respondents 1 to 3 and the petitioner herein are entitled to have 1/4th share in the suit property and the petitioner is entitled to work out his share along with the respondents 1 to 3. Aggrieved by the same, the petitioner file an appeal suit along with the petition to condone the delay of 1100 days in filing the appeal suit. The first appellate Court dismissed the said petition as against which, the present Civil Revision Petition.

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3. On perusal of affidavit filed in support of the condone delay petition, he stated that the petitioner used to travel and stay in other states for business purpose for months together. Therefore, he could not be able to communicate to his counsel to file appeal suit as against the judgment and decree. He further stated that his counsel had undergone bye pass surgery and thereafter he passed away. Therefore, the petitioner could not be able to trace the bundle in time from his counsel's office. After receiving the bundle from his counsel's office, he suffered with jaundice. Therefore, he could not be able to file an appeal suit in time.

4. As such, the petitioner stated several reasons in the affidavit filed in support of the condone delay petition and he failed to explain the day to day delay with sufficient cause. In support of his contention, he did not produce any piece of evidence before the appellate Court. Therefore, the appellate Court rightly dismissed the petition and this Court finds no illegality or infirmity in the order passed by the Court below.

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5. Accordingly, the Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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

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To

1. The Principal Subordinate Judge,
   Salem.

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

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G.K.ILANTHIRAIYAN, J.

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