

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

CORAM

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

C.R.P.(NPD).No.529 of 2016

and

C.M.P.No.2696 of 2016

1.Pattammal (died)

2.Ravichandran

3.Venkatesan

4.Mangammal

5.Sumathy

... Petitioners

(Petitioners 2 to 5 brought on record as LRs of the deceased sole petitioner viz., Pattammal vide Court order dated 30.04.2021 made in CMPs 17309 and 17310/2017 in CRP NPD 529/2016)

Vs.

Kantha

... Respondent

PRAYER : The Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the Fair and Decreetal order dated 20.01.2016 made in I.A. Un-numbered of 2016 in O.S.No.42 of 2014, on the file of the Principal District Court, Dharmapuri.

For Petitioners : Mr..R.Rajadurai for
M/S.C.Prabakaran

For Respondent : Mr.C.Munusamy

ORDER

(Heard through video conferencing)

1. The petitioner is the defendant.
2. On perusal of the typed set of papers, it is seen that the unnumbered petition has been filed under Section 5 for condoning the delay of 315 days. It is seen that the Lower Court has returned the petition on the ground of maintainability. Since the petitioner has filed a single petition with two affidavits and sought two reliefs for condoning the delay and to set-aside the *exparte* order, the trial court has clarified about its maintainability.
3. Only after the delay is condoned, the petitioner is entitled to get his petition to set aside the *exparte* decree numbered and taking for enquiry. Without filing separate petitions at different stages, the petitioner has combined both the prayers in one petition. The Trial Judge has rightly pointed out that it would not be maintainable. At least at that stage, the petitioner should have amended the prayer and filed separate petitions.
4. Without complying the mandatory procedural aspects, the petitioner has confused himself and combined both the prayers under Section 5 of the Limitation Act and Order 9 Rule 13 of CPC in a single petition. He has also not produced any citation to support his point of maintainability and hence the

trial Court has observed the same and rightly dismissed the petition that it is not maintainable. These details are seen from the docket orders of the petition and which is now challenged. As I do not find any factual or legal infirmity in the order passed by the learned Trial Judge, it does not warrant any interference.

In the result, this **Civil Revision Petition stands dismissed**. No costs. Consequently, connected civil miscellaneous petition in CMP.No.2696 of 2016 is also closed.

14.06.2021

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



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R.N.MANJULA,J.

jrs

To

1. The Principal District Court, Dharmapuri.

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



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