

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.684 of 2016
and C.M.P.No.3541 of 2016

Angamuthu

...Petitioner

Vs

Venkatachalam

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 04.01.2016 passed in I.A.No.754 of 2015 in O.S.No.727 of 2010 on the file of the learned Principal District Munsif, Salem.

For Petitioner : Mr.A.K.Kumarasamy
Senior Counsel for
Mr.S.Kaithamalai Kumaran

For Respondent : Mr.D.Shivakumaran

ORDER

This Petition has been filed to set aside the fair and final order dated 04.01.2016 passed in I.A.No.754 of 2015 in O.S.No.727 of 2010 on the file of the learned Principal District Munsif, Salem, thereby allowed the

petition to condone the delay of 1228 days in filing the petition to set aside the exparte preliminary decree.

2.The respondent is the 5th defendant in the suit filed by the petitioner for partition. The respondent appeared through his counsel and thereafter failed to file any written statement in the suit. He was set exparte and an order of exparte decree was passed on 20.09.2011. Thereafter, the petitioner filed execution petition and on receipt of the notice in the execution Court, the respondent came to knowledge about the exparte decree and he was advised to file a petition to set aside the exparte decree passed in the suit.

3.On perusal of the affidavit filed in support of the petition to condone the delay of 1228 days, revealed that the suit itself was filed as against the five persons. The 1st and 3rd defendants are the brothers and they were died long back. Without stating the fact and without impleading the legal heirs of the deceased brother, the suit was filed and obtained decree of partition as against the death persons. Further stated that the petitioner sold out the property to the 3rd parties and as such the petitioner did not appear before the trial Court.

4.Any reason for the delay of 1228 days in filing the petition to set aside the exparte decree was stated in the affidavit. Further, he stated that during the time of final decree application in I.A.No.1109 of 2012, he was advised to file a petition to set aside the exparte decree. Therefore, immediately after receipt of the notice in the final decree application, the petitioner contested the final decree application without filing the petition to set aside the exparte decree.

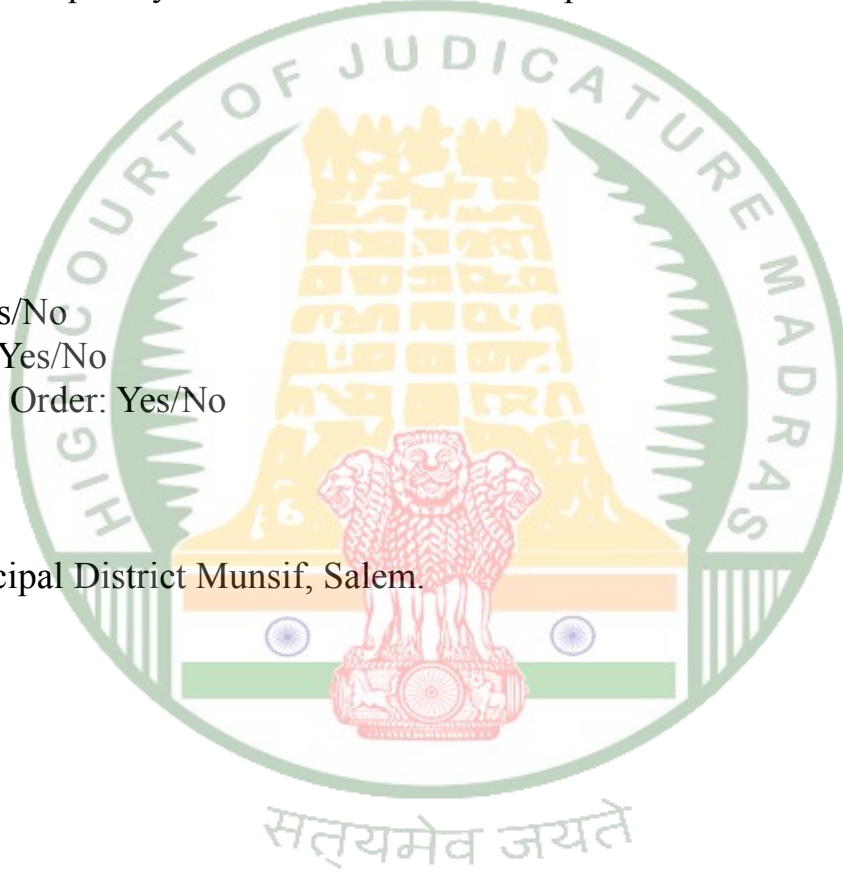
5.Therefore, the respondent had knowledge about the pendency of the suit and also final decree application. Even then, the respondent failed to file a petition to set aside the exparte decree in time. Though the petitioner filed a suit as against the death persons and obtained decree of partition as against the persons, who already died, the respondent can very well agitate the same before the Appellate Court by way of appropriate proceedings. Admittedly, the respondent did not state any sufficient reason to condone the delay of 1228 days in filing the petition. Therefore, without any sufficient cause, the Court below condoned the delay in filing the set aside petition. Therefore, the order passed by the Court below is perverse and contrary to law and also liable to be set aside.

6.Accordingly, the order dated 04.01.2016 passed in I.A.No.754 of 2015 in O.S.No.727 of 2010 on the file of the learned Principal District Munsif, Salem, is set aside and the Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

12.02.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The Principal District Munsif, Salem.



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G.K.ILANTHIRAIYAN.J,

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