

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

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

C.R.P.(NPD).Nos.942 & 943 of 2016
and
CMP.Nos.5301 & 5302 of 2016

Anandayee Ammal

Jagannathan

... 1st and 2nd Petitioners /Defendants 1& 2
/Petitioners in CRP.No.942 of 2016

Ramesh

... Petitioner/ 6th defendant/Petitioner
in CRP.NPD.No.943/2016

Vs.

1.Maragatham

2.Panchavarnam

... Respondents/Plaintiffs/Respondents
in Both CRPs.

COMMON PRAYER : These Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, against the fair and decretal orders of the learned Subordinate Judge, Mettur, dated 30.10.2015 made in I.A.Nos.697 & 698 /2014 respectively, in O.S.No.17/2011.

(In both CRPs)

For Petitioners : Mr.S.Saravanakumar

For Respondents : No appearance

COMMON ORDER
(Heard through video conferencing)

These Civil Revision Petitions have been filed against the order of the learned Subordinate Judge, Mettur dated 30.10.2015 made in I.A.Nos.697 & 698 /2014 respectively, in O.S.No.17/2011, wherein the petitions filed to condone the delay of 455 days in filing the petitions to set aside the preliminary decree, were dismissed.

2. These civil revision petitioners are some of the several defendants in the suit in O.S.No.17/2011. The suit was filed for partition. The petitioners in CRP.No.942/2016 have been arrayed as 1st and 2nd defendants and the petitioner in CRP.No.943/2016 has been arrayed as the 6th defendant in the suit.

3. The learned counsel for the petitioners submitted that the order of the trial Judge that the petitioners have got no right to seek a prayer to set aside the preliminary decree and their remedy lies only by way of filing an appeal is wrong. It is further submitted that the 6th defendant is the subsequent purchaser and he has a valid interest in the suit properties. For minor defendants 4 and 5 Court guardian was appointed and the Court Guardian has filed a formal Written Statement and hence the revision petition should be allowed in the

interest of justice.

4. The learned trial Judge has observed that since the written statement has been filed on behalf of some of the defendants and the suit has been disposed, the decree passed in the suit has to be considered only as a contested one. By so stating, the learned trial Judge has observed that the petitioners have got no right to file a revision petition to set aside the ex parte decree, but he has to prefer an appeal only. It is true that the decree passed by the Court is a contesting decree since some of the defendants have filed the written statement and contested the suit. Since the decree was passed in favour of the plaintiffs and their share has been settled at 5/16th share, the same will bind all the defendants including the defendants, irrespective of whether all of them have contested the suit or remained ex parte.

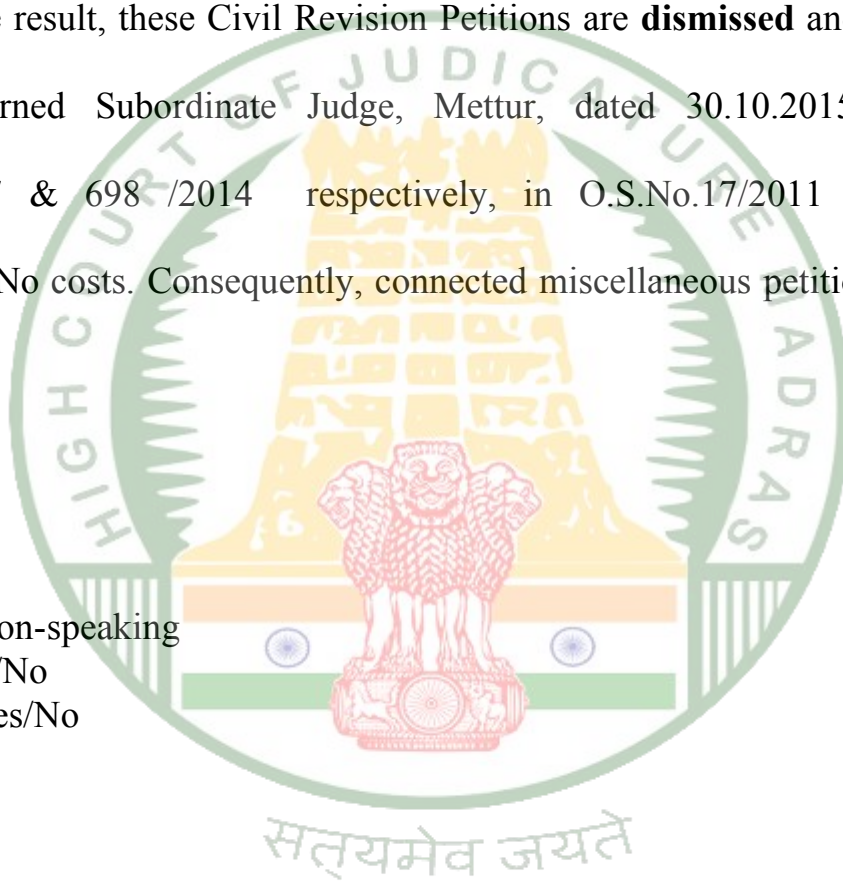
5. The impugned order has been passed in the petitions filed under Section 5 of the Limitation Act. All these submissions now made before this Court as well as before the trial Court can also be made before the Appellate court by way of filing an appeal along with the petition to condone the delay and if the appeal is admitted after condoning the delay. As the ex-parte decree passed against some of the defendants in a suit where there are several

defendants, cannot be set aside individually, the remedy can be sought only by way of preferring an Appeal. Therefore, I do not find any factual or legal infirmity in the orders of the learned trial Judge.

In the result, these Civil Revision Petitions are **dismissed** and the orders of the learned Subordinate Judge, Mettur, dated 30.10.2015 made in I.A.Nos.697 & 698 /2014 respectively, in O.S.No.17/2011 are hereby confirmed. No costs. Consequently, connected miscellaneous petitions are also closed.

15.07.2021

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



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To

1.The Subordinate Court, Mettur.

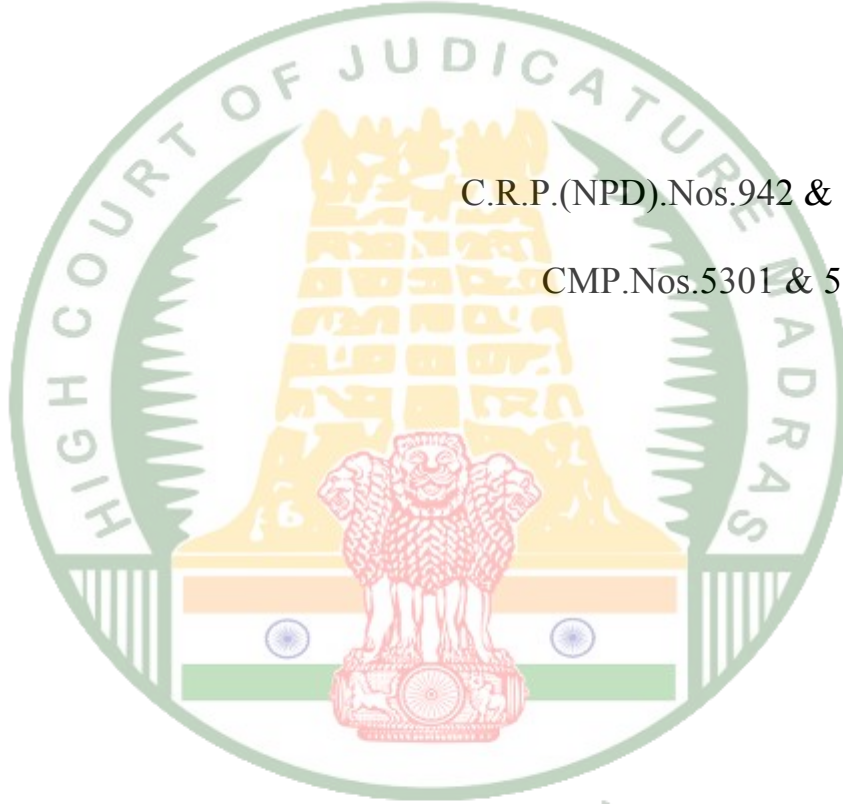
2.The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA,J.

jrs



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