

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.(NPD) No.2786 of 2018
and
Cmp.No.16330 of 2018

1.Vijay @ Jaya
2.Raja

... Petitioners

Versus

Rajendiran

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair order dated 10.11.2017 made in I.A.No.84 of 2017 in Un-numbered CMA on the file of the Principal District Court, Salem.

For Petitioners : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.S.Kamadevan

ORDER

This Civil Revision Petition has been filed against the order of dismissal dated 10.11.2017 dismissing the I.A.No.84 of 2017 in Un-numbered CMA on the file of the Principal District Court, Salem.

2.Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

3.The revision petitioners are the defendants in O.S.No.29 of 2010. The suit was filed for partition and separate possession of the Plaintiff described property and for a consequential injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the plaintiff described properties. The suit was decreed ex parte on 14.06.2010. On 04.01.2011, the defendants have filed an application in I.A. No.177 of 2011 to condone the delay in filing the application to set aside the ex parte decree dated 14.06.2010. They have also filed I.A. No.178 of 2011 to set aside the ex parte decree dated 14.06.2010. On 08.11.2011, I.A. No.177 of 2011 was allowed by condoning the delay. Subsequently, on 08.06.2016, I.A. No.178 of 2011 was also allowed subject to payment of costs of Rs.1,000/- to the plaintiff on or before 24.06.2016. On 24.06.2016, when I.A. No.178 of 2011 was taken up for hearing, it was noticed that the costs of Rs.1,000/- has not been paid. Further, there was no representation for both sides on 24.06.2016. Therefore, I.A. No.

178 of 2011 was dismissed.

4. Aggrieved by the order dated 24.06.2016 in I.A. No.178 of 2011 in O.S.No.29 of 2010, the defendants have filed unnumbered CMA on 14.09.2016. The appeal was returned by giving one month time to the defendants to correct the date of the order in I.A. No. 178 of 2011. The defendants, therefore, filed a Memo before the Sub Court, Attur and the corrected copy of the order was delivered only on 21.10.2016. As the one month time granted for re-presentation of the appeal lapsed, the defendants have filed I.A.No.84 of 2017 in Unnumbered CMA on 24.10.2016 to condone the delay in re-presenting the appeal. A counter was filed in IA No. 84 of 2017 by the plaintiff stating that the delay in re-presenting the appeal is deliberate and intentional.

5. The Appellate Court, after hearing both sides, dismissed the I.A. No.84 of 2017 on 10.11.2017 on the ground that the main CMA itself is not maintainable and the delay in re-presenting the CMA has not been properly explained. Aggrieved by the order dated 10.11.2017, the present Civil Revision Petition is filed by the defendants.

6.On perusal of the order passed by the Court below, this Court finds that the Court below has not taken into consideration the reason for delay but it has decided the matter as if the Civil Miscellaneous Appeal itself is not at all maintainable and on merits, it has passed the order. The application was filed for condoning the delay in re-presentation of the appeal, but the Court below has not restricted its order to the extent whether the delay can be condoned or not. After condoning the delay, the merits of the appeal can very well be decided at the time of admission of the appeal of the maintainability of the appeal can be taken up as a preliminary issue. Therefore, this Court is of the opinion that the order passed Court below is without any application of mind and without considering the reason assigned by the defendants for the delay in re-presenting the unnumbered appeal.

7.Therefore this Court is of the view that in the interest of justice, it would be appropriate to condone the delay of 212 days in representing the unnumbered CMA. Accordingly, I.A. No.84 of 2017 on the file of Principal District Court, Salem is allowed. The Appellate Court is directed to number the Civil

Miscellaneous Appeal and take up the maintainable issues at the time of admission and decided the matter on merits.

8.Accordingly, the Civil Revision Petition is allowed. No cost.
Consequently, the connected miscellaneous petition is closed.

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

klr

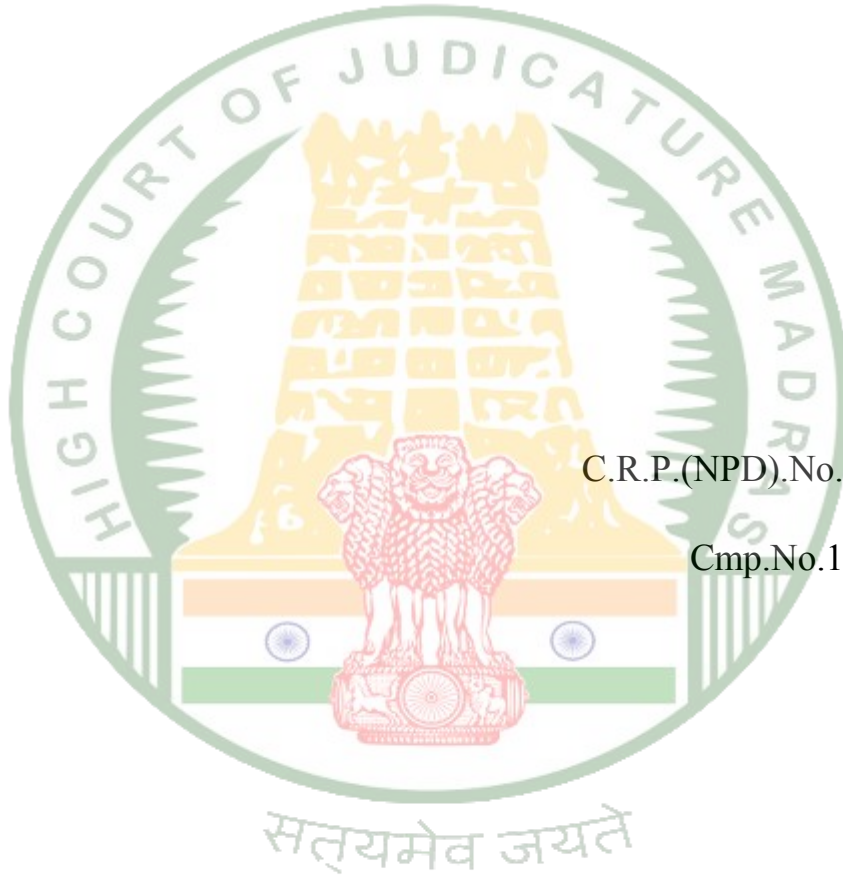
To:

The Principal District Court, Salem.

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KRISHNAN RAMASAMY., J.

klt



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- * Suit in OS No. 29 of 2010 was filed for partition
- * The suit was decreed exparte on 23.06.2016
- * To set aside the exparte decree defendants in the suit have IA No. 178 of 2011
- * IA No. 178 of 2011 was allowed on 08.06.2016 subject to payment of costs of Rs.1,000/- on or before 24.06.2016
- * On 24.06.2016 when IA No. 178 of 2011 was listed for hearing, it was noticed that cost of Rs.1,000/- was not paid. Further, there was no representation for both sides, therefore, IA No. 178 of 2011 was dismissed.
- * Against the order dated 24.06.2016 in IA No. 178 of 2011 in OS No. 29 of 2010, the defendants herein have filed an Appeal on 14.09.2016
- * CMA was returned to correct the decreetal order and fair order dated 24.06.2016 in IA No. 178 of 2011. One month time was granted
- * Defendants have filed a Memo before the Sub-Court, Attur to correct the date of disposal
- * The corrected decreetal order was delivered only on 21.10.2016 by Sub-Court, Attur
- * The defendants have therefore filed I.A. No. 84 of 2017 in Unnumbered CMA on 24.10.2016 to condone the delay in re-presenting the CMA
- * A counter was filed in IA No. 84 of 2017 by the plaintiff stating that the delay in re-presenting the appeal is deliberate and intentional.
- * IA No. 84 of 2017 in unnumbered CMA was dismissed on 10.11.2017 on the ground that the main CMA itself is not maintainable and the delay in re-presenting the CMA has not been properly explained, hence CRP