

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2021

CORAM

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

CRP.NPD.No.789 of 2018

1.M.Rajendran
2.M.Kamalakannan

..Petitioners

Vs.

1.A.Balaraman
2.A.Ramachandran
3.A.Boopathy
4.Devaki
5.Navaneetham

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the order and decretal order in IA.No.710 of 2015 in OS.No.54 of 2008 dated 01.09.2017 passed by the learned Subordinate Judge at Tambaram.

For Petitioners : Mr.M.R.Radhakrishnan

For Respondents : No Appearance

ORDER

This civil revision petition is filed against the order and decretal order passed in IA.No.710 of 2015 in OS.No.54 of 2008

dated 01.09.2017 passed by the learned Subordinate Judge at Tambaram, thereby dismissing the petition to condone the delay in filing the petition to set aside the exparte decree.

2. The petitioners are the defendants 4 and 5 and the respondents 1 to 5 are the plaintiffs. The respondents filed suit for partition in respect of the property comprised in RS.No.290 for an extent of 376 sq. ft situated at Jaladianpet Village, Kancheepuram Taluk. The petitioners filed their written statement. After filing written statement, they failed to appear before the trial court and failed to proceed with the trial. Therefore, they were set exparte and exparte decree was passed against them. The respondents filed application for final decree in IA.No.372 of 2013. In fact, on their application, advocate commissioner was appointed and he also inspected the suit property for division and he also filed a report on 15.09.2015. At that juncture, the petitioners filed petition to set aside the exparte decree with delay of 1460 days.

3. On perusal of the affidavit filed in support of condone delay petition revealed that one of the petitioner fell ill and suffered from jaundice. Therefore, he could not able to contact his counsel. The learned counsel for the petitioners submitted that the property

comprised in survey No.209 is a Natham Poramboke land. The father of the petitioners occupied in the year 1980. He put up thatched house and he was in continuous possession and enjoyment of the suit property. Therefore, the respondents wrongly stated the survey No and filed vexatious suit for partition and as such the petitioners have got good case to succeed in the suit. However, they could not able to proceed with the suit since they could not able to contact their counsel for the reason that one of the defendants suffered ill.

4. Though notice was served to the respondents, no one appeared on behalf of them before this Court in person or through pleader.

5. Considering the above facts and circumstances of the case, the petitioners may be given one more opportunity to defend the suit filed by the respondents. Accordingly, this civil revision petition is allowed and the order passed in IA.No.710 of 2015 in OS.No.54 of 2008 dated 01.09.2017 by the learned Subordinate Judge at Tambaram is set aside on payment of cost of Rs.10,000/- (Rupees Ten Thousand only) to the respondents within a period of two weeks from the date of receipt of copy of this order, failing which the order passed by this Court shall stand automatically cancelled. After setting aside

the exparte decree, the trial court is directed to dispose of the suit within a period of three months thereafter. No order as to costs.

17.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

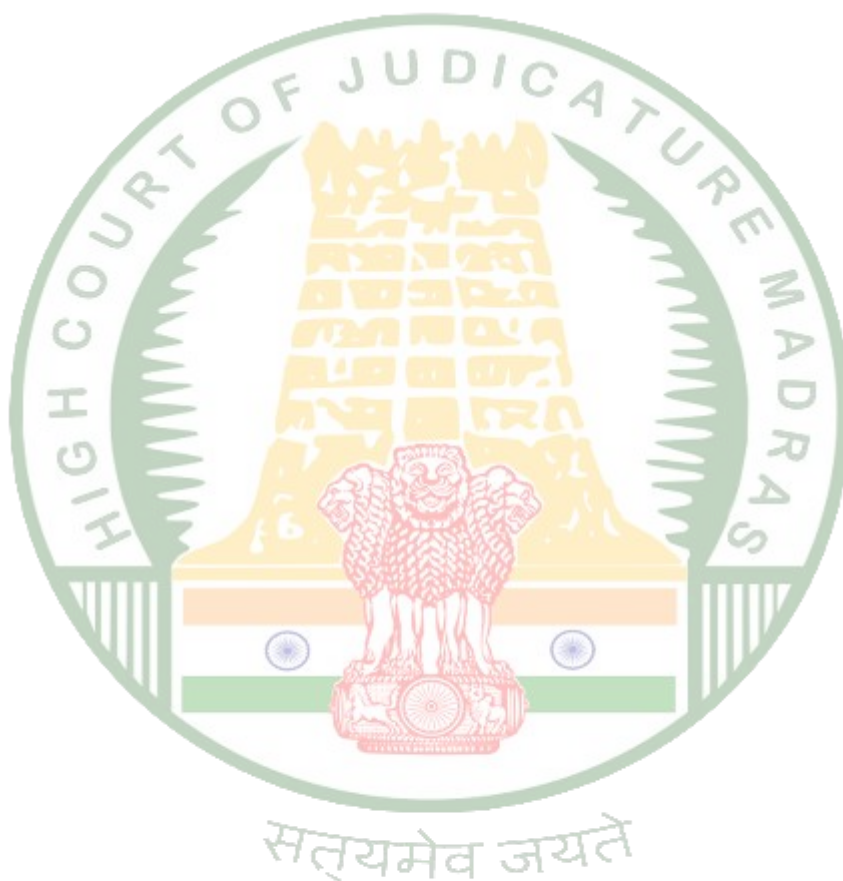
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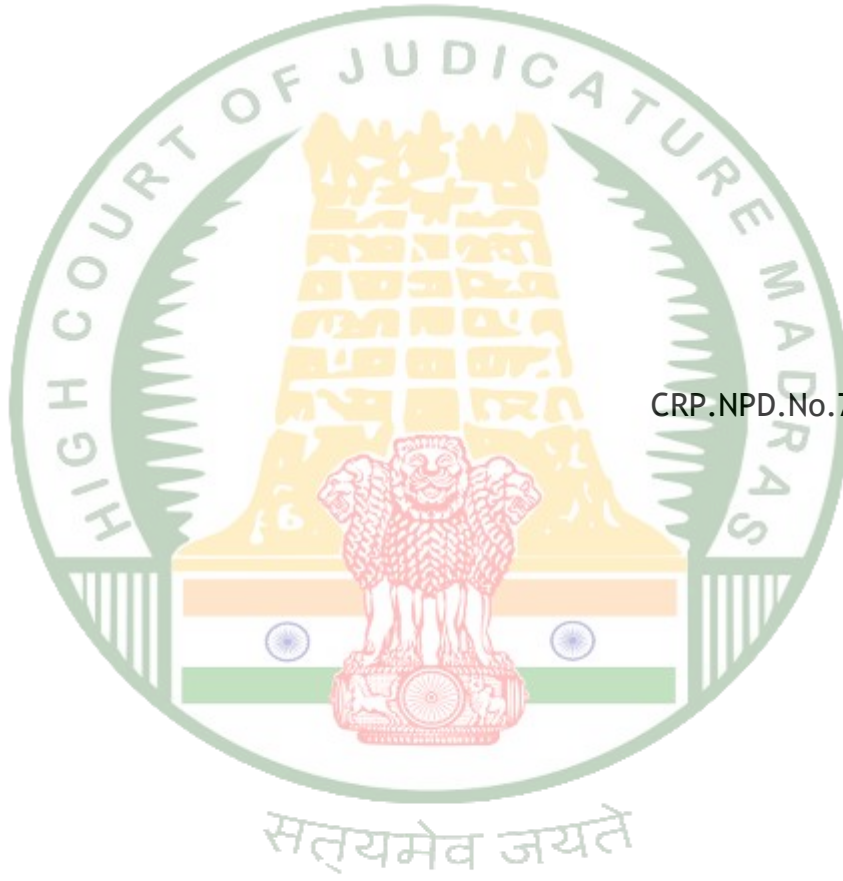
The Subordinate Judge
at Tambaram.



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G.K.ILANTHIRAIYAN,J.

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