

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

C.R.P. (PD) No. 1348 of 2021

Rangasamy

... Petitioner

-VS-

1. SellamuthuGounder

2. Rangathal

3. Poovathal

Palanisamy (Died)

4. Parameshwari

5. Masilamani

... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the fair and decretal order dated 19.03.2019 in I.A. No. 298 of 2017 in A.S. CFR. No. 5875 of 2017 on the file of the Principal District Judge, Coimbatore and consequently, allow I.A. No. 298 of 2017 as prayed for.

For Petitioner : Mr. K.Kumaraguru

ORDER

(The case has been heard through video conference)

The Civil Revision Petition has been field to set aside the fair and

decretal order dated 19.03.2019 in I.A. No. 298 of 2017 in A.S. CFR. No. 5875 of 2017 on the file of the Learned Principal District Court, Coimbatore and consequently, allow I.A. No. 298 of 2017.

2. Brief facts of the case:-

The suit scheduled property belonged to the First Respondent by virtue of a partition deed dated 17.03.1988 and after the demise of his parents, he became the absolute owner of the suit scheduled property. The suit scheduled property was in joint possession of the Petitioner and the Respondents. Since the Petitioner had filed O.S. No. 275 of 2009 before the District Munsif Court, Pollachi seeking permanent injunction, the First Respondent filed the suit in O.S. No. 104 of 2009 before the Subordinate Court, Pollachi seeking division of the suit property and separate possession. The Trial Court was pleased to pass preliminary decree in O.S. No. 104 of 2009 on 14.08.2013 against which, the Petitioner filed I.A. No. 298 of 2017 under Order 41 Rule 3-A of the Code of Civil Procedure, 1908, read with Section 5 of the Limitation Act, 1963, before the Principal District Court, Coimbatore seeking to condone the delay of 1291 days in filing appeal. The Trial Court dismissed I.A. No. 298 of 2017 by order dated 19.03.2019 against which, the present Civil Revision Petition has been filed.

3. The Learned Counsel for the Petitioner would submit that the Petitioner is the Second Defendant in O.S. No. 104 of 2009 filed by his father against his siblings for partition of the family properties. He would further submit that the Trial Court was pleased to pass a preliminary decree in O.S. No. 104 of 2009 on 14.08.2013. He would further submit that the properties which are already given to one of the sisters, viz., Poovathaal, was not brought forthwith in the partition, the Petitioner intended to file appeal against the preliminary decree. He would further submit that since the Petitioner fell down from the bicycle and broke his leg, he was unable to move and was unable to file the application in time and thereby, there had been a delay of 1291 days in preferring the appeal before the District Court, Coimbatore. He would further submit that the Petitioner had filed I.A. No. 298 of 2017 seeking to condone the delay of 1291 days in filing the appeal, whereas the Trial Court without taking into consideration the reason for the delay, had dismissed the petition. Hence, he would pray that the order dated 19.03.2019 in I.A. No. 298 of 2017 in A.S. CFR. No. 5875 of 2017 passed by the Learned Principal District Court, Coimbatore may be set aside.

4. Heard the Learned Counsel for the Petitioner and perused the materials available on record.

5. The Petitioner had filed an affidavit in I.A. No. 298 of 2017 stating that he had fallen down from the bicycle on account of the intervention of a street dog and got injury in his leg and thereby, he was unable to move out. Therefore, there was delay of 1291 days in filing the appeal. The Appellate Court finding that no medical records or medical prescription was produced to substantiate the alleged cause, had dismissed the petition to condone the delay of 1291 days in filing the appeal. The Appellate Court had held that no sufficient reason has been assigned by the Petitioner to condone the huge delay of 1291 days. Further, the Appellate Court had found it fit to go into the merits of the case and had also passed a detailed order, and the relevant passage reads as follows:-

"8. It is a settled principle of law that while deciding petition under Section 5 of the Limitation Act, the Court need not go into the merit of the case. However, the case of the respondents is that the petitioner is dragging on the matter. In such circumstances,

this Court is of the view that this Court can see whether the petitioner has filed the petition in a bonafide manner and to contest the case bonafidely. As stated above the petitioner is contesting the case with a view to defeat and defraud the lawful claim of his sister namely respondent No.3 Poovathal. The Hindu Succession Act (Act 39/2005) has been introduced with a view to empower the women equal that of the men, it is a social, beneficial legislation. Admittedly, the suit properties are ancestral properties. The 3rd respondent is a daughter. Her father, 1st respondent is alive and he filed the suit for partition. Admittedly, there is no registered partition took place before 20-12-2004. The petitioners relied on the alleged partition agreement dated 29-11-2006 i.e. after the coming into the force of the Act 39/2005, the 3rd petition is entitled to share equal that of her brothers. Hence, this Court comes to the conclusion that the petitioner has preferred the appeal with the delay of 1291 days only with a view to drag on the proceedings as far as possible."

Viewed from that perspective, there does not appear to be any infirmity in the order dated 19.03.2019 in I.A. No. 298 of 2017 in A.S. CFR. No. 5875 of 2017

passed by the Learned Principal District Court, Coimbatore, warranting any interference by this Court in the exercise of discretionary process under Article 227 of the Constitution.

6. Accordingly, the Civil Revision Petition is dismissed. No costs.

15.07.2021

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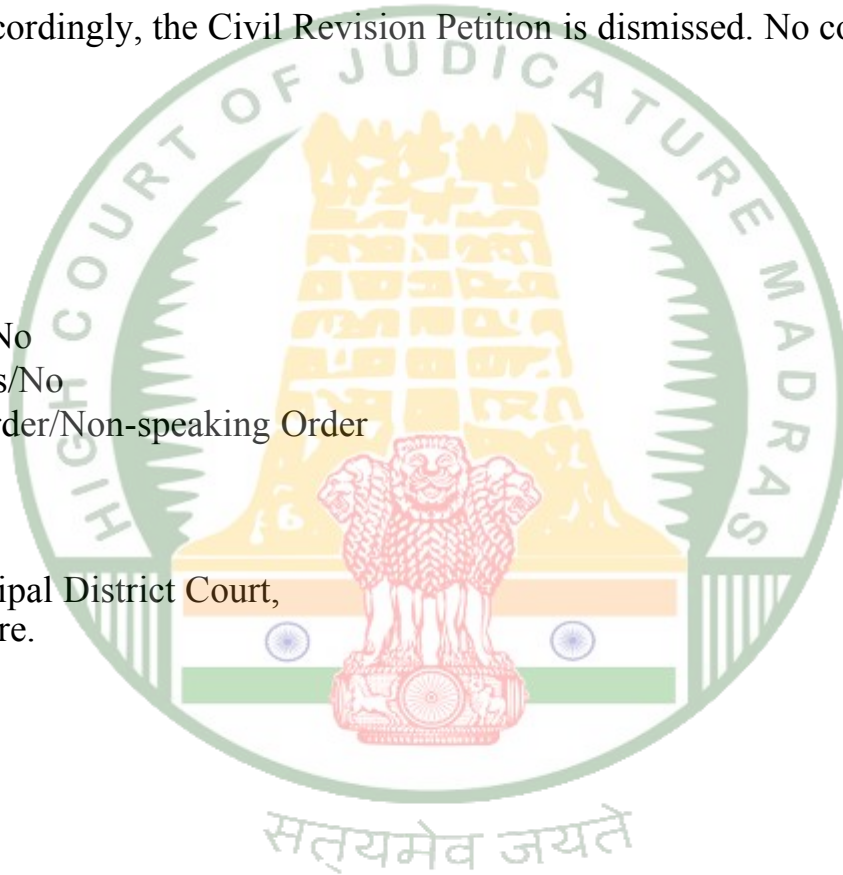
Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Principal District Court,
Coimbatore.



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A.D. JAGADISH CHANDIRA, J.

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