

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.NPD.No.1619 of 2020

S.Gomathi

...Petitioner/Petitioner/Plaintiff

Vs

1.S.Sundariammal

2.S.Ramesh

3.S.Kumaran

...Respondents/Respondents/Defendants

Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decreetal order dated 24.01.2020 passed in I.A.No.183 of 2018 in O.S.No.6 of 2006 on the file of II Additional District and Sessions Court, Ranipet.

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For Petitioner

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Mr.B.K.Girish Neelakantan

For Respondents

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No appearance

ORDER

The plaintiff in O.S.No.6 of 2006 which was pending on the file of the II Additional District and Sessions Court, Ranipet at Vellore is the revision petitioner herein.

2.The said suit had been filed by the plaintiff, a daughter in the family seeking partition and separate possession of the property mentioned to the schedule of the plaint against her mother and two brothers.

3.I am informed that a preliminary decree had been passed in the said suit on 09.10.2012. Thereafter, the plaintiff had filed an application seeking final decree in I.A.No.163 of 2015. That application came for consideration again before the learned II Additional District and Sessions Court, Ranipet, Vellore District.

4.A memo was filed by the learned counsel for the petitioner “the above final decree petition may be disposed of as not pressed and I.A.No.163 of 2015 may be dismissed by this Court”. It was signed by the counsel for the petitioner on 09.08.2018. On the left hand side of the memo there was a signature of the petitioner.

5.The grievance raised by Mr.B.K.Girish Neelakantan, learned counsel for the petitioner is that the petitioner had not given any such

instructions to the learned counsel to withdraw I.A.No.163 of 2015 and permit the same to be dismissed as not pressed. In view of this fact and based on the said memo, the learned II Additional District and Sessions Judge, Ranipet, dismissed the I.A.No.163 of 2015. It must be pointed out that pursuant to I.A.No.163 of 2015 an Advocate Commissioner had also been appointed to divide the property in accordance with the preliminary decree dated 09.10.2012 and the matter was at the stage of filing a report and plan of the Advocate Commissioner.

6. Thereafter, the petitioner herein had filed I.A.No.183 of 2018 seeking to condone the delay of 52 days in filing the petition to set aside the order dated 24.08.2018 dismissing I.A.No.163 of 2015. The learned Judge had called upon the petitioner to lead evidence since she questioned the authority of her counsel to withdraw of the said application. Accordingly, the petitioner herein also grazed the witness box and had tendered evidence. She very specifically stated that specific instructions have not been given to the counsel to withdraw I.A.No.163 of 2015. She however, admitted that in some blank paper she had put her signature. However, she very specifically stated that she had not signed any memo seeking withdrawal of I.A.No.163 of 2015.

7.The learned Judge had to examine whether the delay of 49/52 days had been properly explained. On the other hand, the learned Judge had stated that there had been an earlier compromise between the plaintiff and the defendants in the suit and that the defendants had agreed for partition of the plaintiff's share of monetary compensation. These are all extraneous statements which is not based on any records. The learned Judge had finally stated that since the petitioner herein had also signed in the memo she cannot claim ignorance and she was estopped from raising such contention. That reasoning of the learned Judge has to be set aside and it is accordingly set aside.

8.The learned Judge had originally invited the present petitioner to adduce evidence and she grazed the witness box and explained the circumstances. It is also to be pointed out that under Order XIX of CPC any statement made in an affidavit may also be put to test by cross-examination. The defendants could very well have cross-examined the petitioner herein on the averments made not just on the witness box but also on the affidavit filed in support of the petition seeking to condone the delay in filing an application to set aside the order. Not having resorted to that, the learned Judge, seems to have taken the issue in his hands and has stated that the petitioner is estopped from questioning the

memo.

9. Once an allegation tendering on the borderline of fraud has been alleged or misrepresentation had been alleged, then naturally, the issue of estopped will not arise. Even if the learned Judge is of the opinion that the petitioner herein is estopped, then he should have balanced that particular finding or observation with the fact that the petitioner had stated that in blank papers she had been asked to sign by the learned counsel. Without balancing those two factors, the learned Judge could not have come to any such conclusion.

10. I have therefore no hesitation in setting aside the said order. It would only be appropriate that the learned II Additional District and Sessions Judge, Ranipet, Vellore District, while examining the reasons stated for delay in filing application to set aside the order, initially passes an order either condoning the delay or not and thereafter, may take a decision whether to set aside the order dated 24.08.2018.

11. The learned counsel for the petitioner stated that the defendants had been set exparte in the preliminary decree stage. It is also seen that even before this Court private notice had been served on all the three respondents and acknowledgment cards are available in the Court records, but they had not thought it fit to be present before this Court.

12.Insofar as the Court notice is concerned again R1 and R2 had been served and insofar as R3 notice is awaited. Service is deemed sufficient, since acknowledgment cards are available in the Court records.

13.The order under revision is therefore, set aside and the petitioner herein is requested to go back to the II Additional District and Sessions Court, Ranipet, Vellore District and I.A.No.183 of 2018 is to be again revived. The learned Judge may keep in mind that the petitioner has been granted an valuable right under the preliminary decree and had also taken steps to appoint an Advocate Commissioner and had ensured that an Advocate Commissioner had been appointed and had also taken steps to enable the Advocate Commissioner to inspect the suit premise.

14.It would therefore only be appropriate that the matter proceeds in accordance with law and the issue of delay may be examined by the learned Judge and a considered order may be passed in I.A.No.183 of 2018 and also in the subsequent application to set aside the order dated 24.08.2018. It would be appropriate that a time line is fixed since, the suit itself is of the year 2006 and the plaintiff has been knocking the

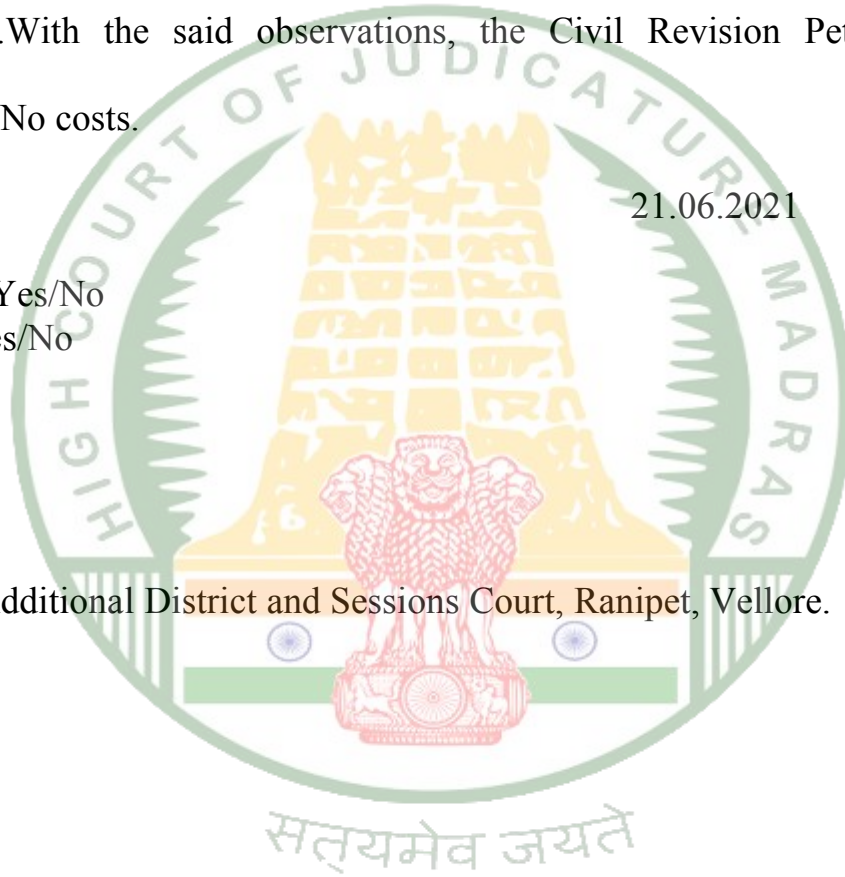
doors of the court for the past 15 years. I therefore direct that all proceedings in O.S.No.6 of 2006 should be concluded on or before 31.12.2021.

15.With the said observations, the Civil Revision Petition is allowed. No costs.

21.06.2021

Internet:Yes/No
Index:Yes/No
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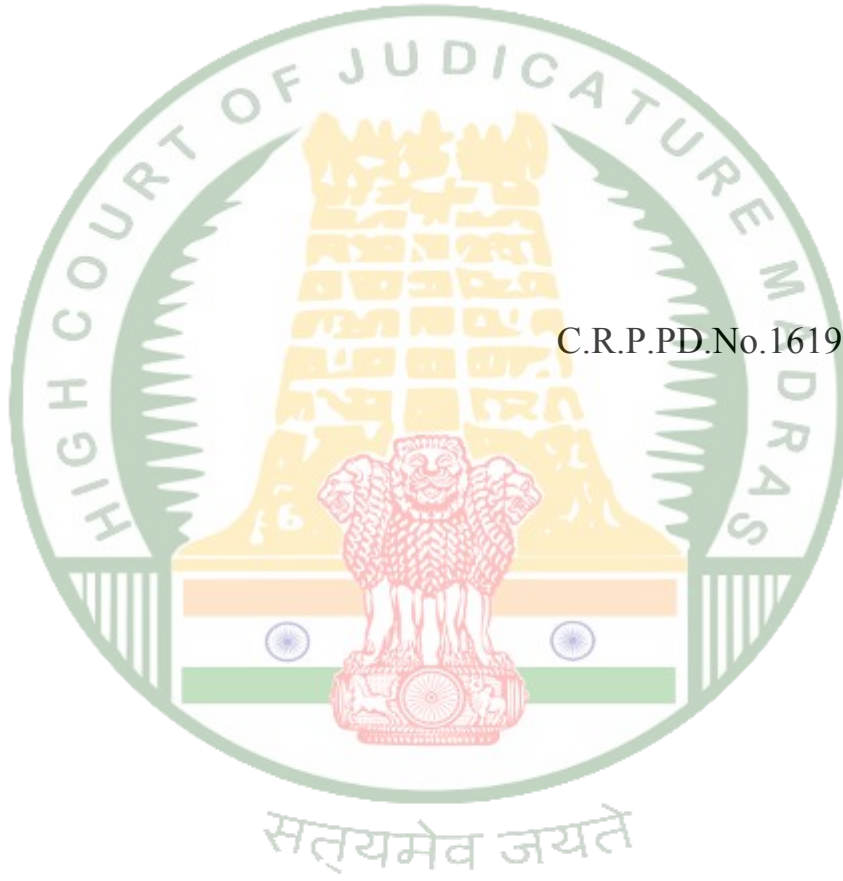
To
The II Additional District and Sessions Court, Ranipet, Vellore.



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C.V.KARTHIKEYAN,J.

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