

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

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

CRP.NPD.No.1738 of 2014 and
MP.No.1 of 2014

1.Jayaramappa
2.Muniraj
3.Krishnan

..Petitioners

Vs.

1.Bairamma
2.Sakkamma
3.Kempakka
4.Lakshmamma
5.Yesodha
6.Biramma @ Chinna Biri

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the fair and decretal order passed in IA.No.485 of 2013 in OS.No.247 of 2008 dated 21.03.2014 on the file of the Subordinate Judge at Hosur.

For Petitioners : Mr.R.Jayaprakash
For Respondents

For R1 : Mr.S.Kumaresan
For R2, 4 & 5 : Mr.M.B.Ram Prabhu
R3 & 6 : Exparte

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in IA.No.485 of 2013 in OS.No.247 of 2008 dated 21.03.2014 on the file of the Subordinate Judge at Hosur thereby dismissing the petition to contend the delay in filing the petition to set aside the exparte decree.

2. The petitioners are defendants 4, 5, 7 in the suit filed by the first respondent herein for partition in respect of the suit property. After engaging a counsel on behalf of the petitioners herein before the trial court, they failed to file written statement and failed to appear before the trial court for hearing. Therefore they were set exparte and exparte decree was passed on 05.08.2009. In fact, the first respondent also filed application in IA.No.187 of 2013 for passing of final decree. At that juncture, the petitioners came forward with the petition to set aside the exparte decree along with the condone delay petition to condone the delay of 1473 days.

3. On perusal of the affidavit filed in support of condone delay petition, in which the reason stated by the petitioners is that the earlier counsel on record who appeared on behalf of them did not inform about the hearing date and as such the petitioners could not able to file their written

statement and also to appear before the trial court. Only after receipt of notice from the final decree application in IA.No.187 of 2013, they came to knowledge about the exparte preliminary decree passed against them. Those reasons are not sufficient to condone the delay of 1473 days in filing the petition to set aside the exparte decree. The petitioners are only defendants 4,5 & 7. In respect of other defendants are same family members and did not file any application to set aside the exparte decree. Therefore, they already had knowledge about the preliminary decree passed in favour of the first respondent herein and did not take any step to set aside the exparte decree passed against them. Therefore, the trial court rightly dismissed the petition for condoning the delay of 1473 days in filing the petition to set aside the exparte decree. As such, this Court finds no irregularity or infirmity in the order passed by the trial court.

4. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

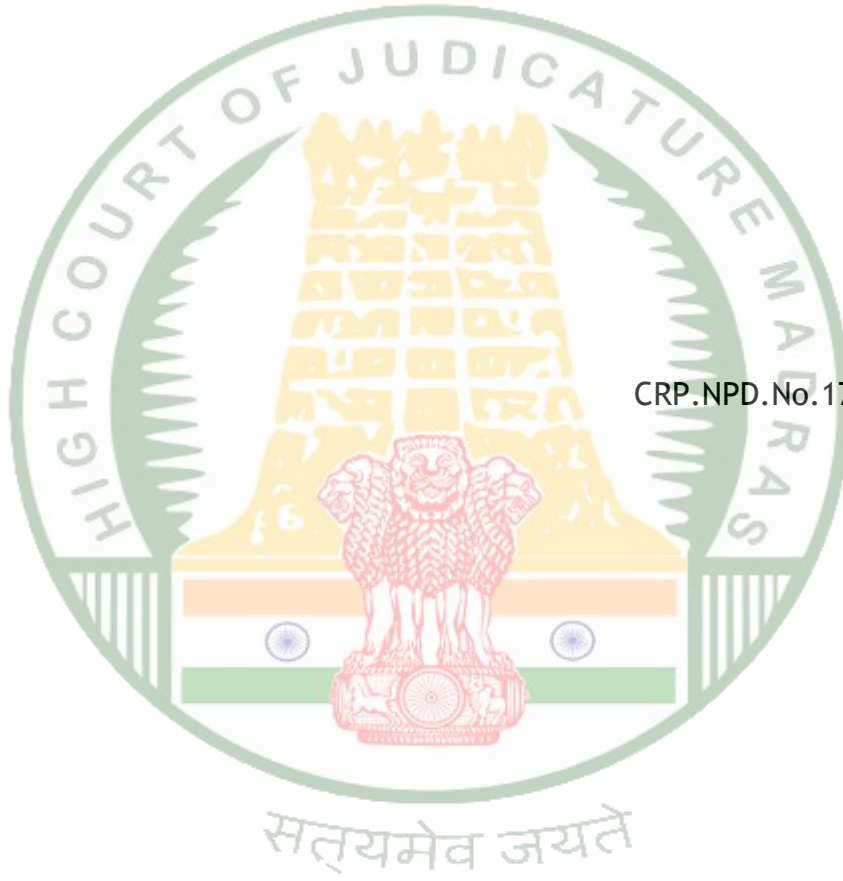
08.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To
The Subordinate Judge at Hosur.



CRP.NPD.No.1738 of 2014

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