

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

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

CRP.PD.No.2450 of 2017

and

CMP.No.11556 of 2017

K.Dhamayandhi

... Petitioner

Vs.

1. N.Sekar

2. Sathyavani

3. Poovathal

4. M.Mohanasundaram

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 16.02.2017 made in I.A.No.884 of 2012 in I.A.No.185 of 2011 in O.S.No.19 of 2008 as unsustainable, by allowing the revision petition and consequently dismiss the said condone delay application.

For Petitioner : Mr.V.P.Sengottuvel

For Respondents : Mr.R.Bhranidharan (for R1 to R3)

: Notice Served (for R4)

ORDER

This Civil Revision Petition is arising out of the fair and decretal order passed in I.A.No.884 of 2012 in I.A.No.185 of 2011 in O.S.No.19 of

2008 dated 16.02.2017 on the file of the Subordinate Judge, Tiruchengode, thereby, allowing the petition to condone the delay in filing the application to restore I.A.No.185 of 2011.

2. The petitioner is second defendant in the suit filed by the respondents for partition and permanent injunction, in respect of the suit property. After filing the written statement, the suit was dismissed for default for the reason, the respondents did not appear before the trial Court. The respondents filed a petition to restore the suit with a petition to condone the delay in I.A.No.67 of 2011. In I.A.No.67 of 2011, which was allowed on 14.03.2011. Thereafter, the restoration petition to restore the main suit was numbered and the respondents failed to serve notice to the petitioner herein. Therefore, the said application was dismissed for default. The respondents again filed a petition to restore the main suit with a delay of 317 days. The condone delay petition was filed, on the ground that the respondents counsel's sister as well as his father died and as such, their counsel could not be able to file a petition to restore the restoration petition in time. It was allowed on condition that the respondents shall pay a sum of Rs.2,000/- as costs.

3. The learned counsel for the petitioner submitted that the reasons stated in the condone delay petition is false and they did not even properly mention with the date of death of their counsel's father. He died on 16.02.2011, whereas they mentioned as 17.02.2011. Further, the respondents failed to explain the delay with sufficient cause. In support of his contentions, he relied upon the judgments reported in 2012 (3) SCC 563 (*Postmaster General -vs- Living Media India Limited*) and 2010 (8) SCC 685 (*Balwant Singh -vs- Jagdish Singh*).

4. On a perusal of the records, it reveals that the petitioner is the second defendant in the suit filed by the respondents for partition and permanent injunction. The first defendant is none other than is own brother. However, the first defendant sold out the entire property in favour of the petitioner herein. Therefore, the petitioner has vehemently contested these applications. The main suit was dismissed for default. The respondents filed a petition to restore the main suit with the condone delay petition in I.A.No.67 of 2011, which was allowed on 14.03.2011. While filing the restoration petition there was delay and as such, they filed a petition to

condone the delay along with the restoration petition.

5. In the said application notice was ordered and on receipt of the counter filed by the petitioner herein it was allowed. When the condone delay petition was allowed, the restoration petition restoring the suit is automatic, even then the Court below dismissed the same for the reason that no notice was served on the opposite parties. However, the said application was also dismissed for default only on the ground that no notice was served. Therefore, the Court below rightly allowed the petition to condone the delay to restore the main suit on the payment of Rs.2,000/- costs. The learned counsel for the respondents also submitted that the costs of Rs.2,000/- was already paid and the same was duly received by the petitioner herein. Therefore, this Court finds no irregularity or infirmity in the order passed by the Court below.

6. Accordingly, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

09.02.2021

Speaking/Non-speaking order
Index : Yes/No

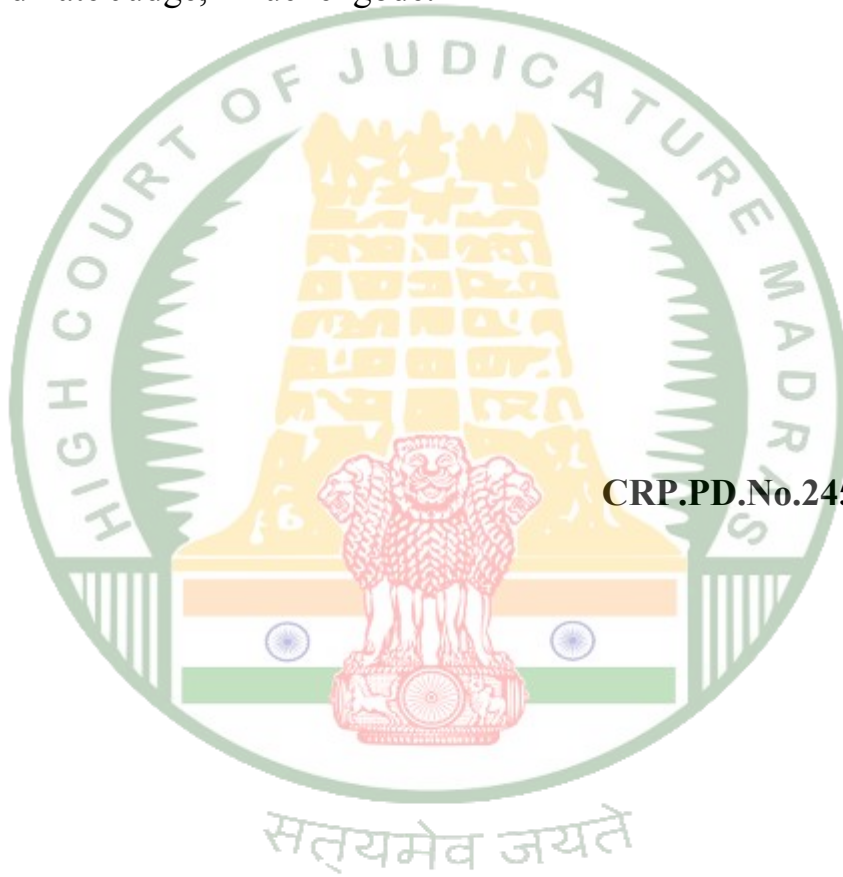
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G.K.ILANTHIRAIYAN,J.

Kv

To

The Subordinate Judge, Tiruchengode.



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