

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

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

CRP.PD.No. 2474 of 2017 and CRP.NPD.No.1390 of 2019
and
CMP.No. 11684 of 2017 and CMP.No.9132 of 2019

CRP.PD.No. 2474 of 2017

R.Loganathan

..Petitioner

Vs.

1. Vasugi
2. C.Chithra
3. Shanthi
4. G.Rajesh Kumar
5. Rajeena
6. Reshmi

..Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the orders of the learned Additional Special Judge of Krishnagiri, dated 23.02.2017 in I.A.No.129 of 2016 in O.S.No.28 of 2010 and allow the above C.R.P.

For Petitioner

: Mr. J.Hariharan
For Mr.V.Nicholas

For Respondents

: No Appearance

CRP.NPD.No.1390 of 2019

R.Loganathan

... Petitioner

Vs.

1. Vasugi

2. C.Chithra

... Respondents

PRAYER: The Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the orders of the learned Additional Special Judge of Krishnagiri, dated 20.02.2018 in I.A.No.2 of 2018 in O.S.No.27 of 2010 and allow the above C.R.P.

For Petitioner

: Mr. J.Hariharan

For Mr.V.Nicholas

For Respondents

: No Appearance

COMMON ORDER

These Civil Revision Petitions are directed as against the fair and decretal orders passed in I.A.No.129 of 2016 in O.S.No.28 of 2010 dated 23.02.2017 and in I.A.No.2 of 2018 in O.S.No.27 of 2010 dated 20.02.2018 on the file of the learned Additional Special Judge, Krishnagiri praying to allow these Civil Revision Petitions.

2. In both the Civil Revision Petitions, the petitioner is one and the same. He filed two suits for declaration and injunction as against the respondents. During pendency of the suit in O.S.No.28 of 2010, the third defendant died on 22.02.2012, but the petitioner has no knowledge about the death of the third defendant. When he came to know about the death of the third defendant, he filed a petition to condone the delay in filing the petition to set aside the abatement and to bring the Legal Heirs of the deceased third defendant. In filing the setting aside the abatement petition there was a delay of 346 days.

3. Though notice was served to the respondents and the name of the respondents are printed in the cause list, no one appeared on behalf of the respondents by persons. Heard the learned counsel for the petitioner.

4. The petitioner stated that the reason for the delay is that he had no knowledge about the death of the third defendant and other defendants also did not inform the same to the petitioner. The other suit filed by the petitioner in O.S.No.27 of 2010 as against the respondents 1 and 2 herein

for declaration and injunction, in respect of the suit schedule property was dismissed for default. The petitioner did not file any petition to restore the suit, since he filed a petition to set aside the abatement caused as against the third defendant with condone delay petition. When the petitioner filed both the suits as against the same parties.

5. The petitioner did not file any petition to restore the suit in O.S.No.27 of 2010. Both the suits are pending on the file of the same Court viz., the Additional Special Judge, Krishnagiri. The trial Court dismissed both the petitions for the reason that the petitioner did not state any valid reason for the in-ordinate delay in filing the petition to set aside the abatement as well as the reason for not restoring the suit in O.S.No.27 of 2010.

6. On a perusal of the affidavits filed by the petitioner herein in both the petitions, the petitioner came to know about the death of the third defendant only now and filed a petition to set aside the abatement with the delay of 346 days. Since the petition to condone the delay was pending in O.S.No.28 of 2010, the petitioner did not file any petition to restore the suit

in O.S.No.27 of 2010. The petitioner may be given one more opportunity to try the cases.

7. In view of the above discussion, these civil revision petitions are allowed and the orders passed in I.A.No.129 of 2016 in O.S.No.28 of 2010 dated 23.02.2017 and in I.A.No.2 of 2018 in O.S.No.27 of 2010 dated 20.02.2018 are set aside. However, the trial Court is directed to dispose both the suits in O.S.Nos. 27 and 28 of 2010 within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed. No costs.

18.01.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

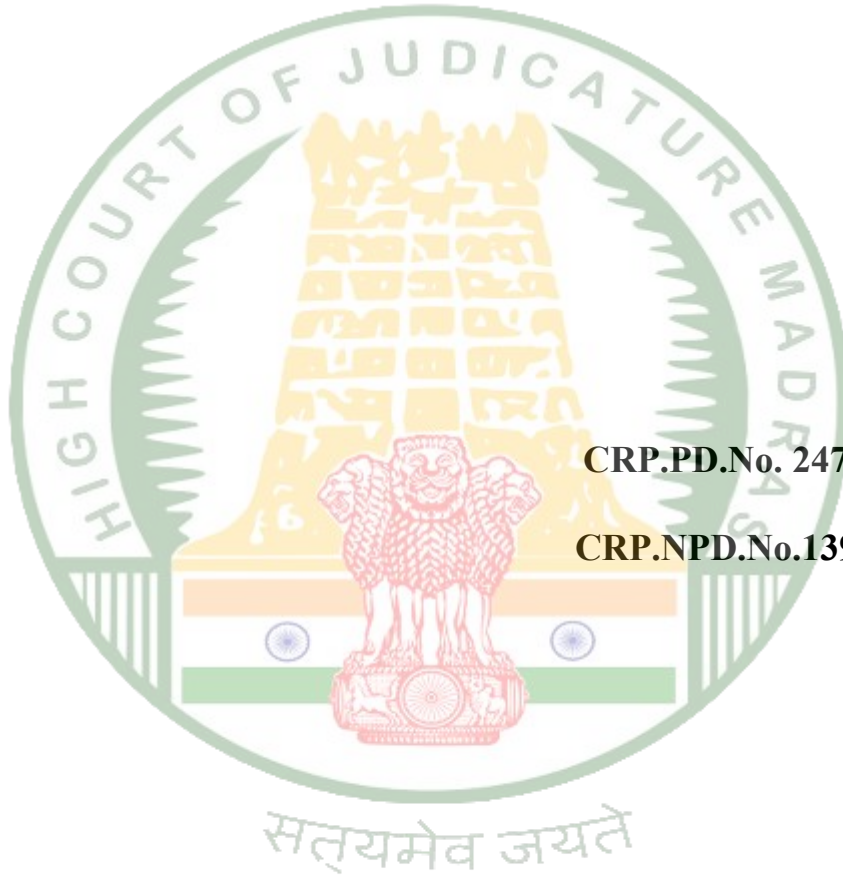
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To

The Additional Special Judge of Krishnagiri.

G.K.ILANTHIRAIYAN,J.

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and
CRP.NPD.No.1390 of 2019**

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