

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2021

CORAM:

THE HONOURABLE **MR.JUSTICE A.D.JAGADISH CHANDIRA**

CRP (NPD) No.2577 of 2017 and
CMP No.12286 of 2017

Rabiya Banu ... Petitioner

Vs.

Ziauddin Ahmed ... Respondent

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the Order and Decretal Order dated 02.04.2016 made in I.A.No.431 of 2014 in O.S.No.336 of 2013 on the file of the 1st Additional District Court, Namakkal.

For Petitioner : Mr.P.Tamilavel

For Respondent : No appearance

ORDER

(This case has been heard through video conference)

The revision petition has been filed against the fair and decreetal order, dated 02.04.2016 made in I.A.No.535 of 2014 in I.A.No.564 of 2007 in O.S.No.351 of 1980 on the file of the learned Subordinate Judge, Namakkal. The petitioner is the 48th respondent in I.A.No.564 of 2007.

2. The brief facts of the case are as follows:

The suit in O.S.No.351 of 1980 is filed for partition. In the said original suit, the respondent/plaintiff had obtained a decree for partition. At the time of passing preliminary decree, the revision petitioner was minor and his father, the 12th respondent had continued to contest the dispute on behalf of her. Thereafter, the respondent had filed a petition for final decree on 28.12.2006. Hence, the case has been posted for filing of counter by the revision petitioner. The revision petitioner had not filed any counter and thereby the final decree was came to be passed in I.A.No.564 of 2007 on 25.01.2010. Thereafter, the revision petitioner filed a petition to set aside the exparte decree passed in I.A.No.564 of 2007 along with a petition under

Section 5 of the Limitation Act in I.A.No.535 of 2014 to condone the delay of 1586 days in filing the petition to set aside the exparte decree against her. At that time, she was affected with Jaundice and she was unable to file her counter. The respondent had filed counter stating that the reasons assigned to condone the delay of 1586 days are false and the petitioner had knowledge about the suit and she was represented by her counsel in the suit and hence she was not entitled to file such an application.

3. Upon consideration of the evidence on record, the trial Court dismissed the petition filed to condone the delay of 1586 days, concluding that no sufficient cause has been shown by the revision petitioner. Against the said order of dismissal, the petitioner filed the present revision.

4. The learned counsel appearing for the revision petitioner would submit that the revision petitioner is the 48th respondent in the final decree proceedings. At that time, she was affected with Jaundice and unable to appear before the Court to file her objection or counter. The trial Court has passed the exparte final decree against her and thereafter on coming to

know about the exparte decree, she had filed the petition to set aside the exparte decree and since there has been a delay of 1586 days, she filed a petition to condone the delay.

5. Heard the counsel for the petitioner and perused the materials available on record. There is no representation for the respondent.

6. It is the case of the petitioner that she was affected with Jaundice and she was unable to appear before the Court and to file counter and an exparte final decree has been passed against her and thereafter she has filed a petition to set aside the exparte decree. However, on a perusal of records, it shows that the petitioner has not shown any sufficient cause for condoning the delay of 1586 days and no documents were produced to prove that she was affected with Jaundice. Further, it is also stated that the petitioner is in possession of the property and as per the lower Court records, it is seen that after passing of final decree on 25.01.2010, the respondent had filed execution proceedings in REP.No.69 of 2011 and only after service of notice, the petition to set aside the exparte decree has been

filed.

7. In view of the above, this Court is of the opinion that the trial Court was right in concluding that the petitioner has not shown any sufficient cause to condone the delay of 1586 days to set aside the exparte decree. Hence, I do not find any infirmity in the order passed by the trial Court.

In the result, the Civil Revision is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

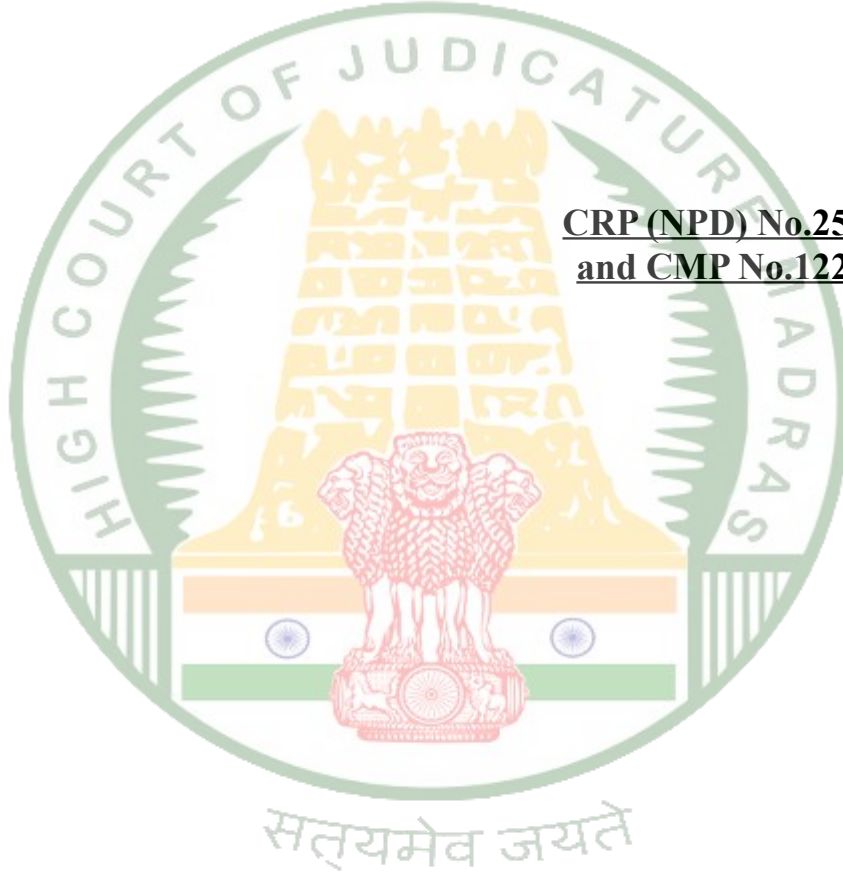
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Index: Yes/No
Speaking order / Non speaking order

To

I Additional District Court,
Namakkal

A.D.JAGADISH CHANDIRA, J.



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