

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(NPD).No.4114 of 2018

1.Nandakumar,
2.Manonmani,
3.Geethamani (died)

... Petitioners

Versus

Rathinavelu

... Respondent

(Petitioners 1 and 2 are the legal heirs of the deceased 3rd petitioner viz., Geethamani, impleaded vide Court order dated 17.12.2020 made in C.R.P.No.4114 of 2018 (RSMJ))

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and final order dated 27.08.2018 made in I.A.No.121 of 2017 in A.S.No.23 of 2013 on the file of the V Additional District Judge, Coimbatore.

For Petitioners : Mr.L.Mouli
for Mr.M.N.Balakrishnan
For Respondent : Mr.M.V.Venkataseshan
for Mr.V.V.Sathya

ORDER

This Civil Revision Petition has been filed challenging the order dated 27.08.2018 made in I.A.No.121 of 2017 in A.S.No.23 of 2013 on the file of the V Additional District Judge, Coimbatore.

2.The learned counsel for the petitioners submitted that the petitioners have filed the application to condone the delay of 1174 days in filing the application to restore the appeal which was dismissed for default on 03.04.2013. The Court below after hearing both the parties dismissed the application stating that no reason was given to condone the delay of 1174 days. Aggrieved over the same, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioners further submitted that the one Nachammal filed the appeal in A.S.No.23 of 2013, she was died on 25.06.2016. The petitioners are the legal heirs of the Nachammal. The legal heirs are not aware of the fact that the appeal in A.S.No.23 of 2013 was dismissed for default. After knowing the same, they filed an application to condone the delay of 1174 days in filing the application to

restore the appeal on 22.06.2017. However, the Court below dismissed the application without considering the fact that the petitioners are the legal heirs of Nachammal and they are not aware of the appeal. Further, according to the petitioners, their mother has full entitlement over her father's property. The Senior Nachimuthu Gounder, father of Nachammal passed away in the year 1958 and therefore, the mother of the petitioners has entitled for equal share in the property as per Hindu Successions Act, 1956. Therefore, if the delay is not condoned, the right of the property will be passed to the respondent herein without proper adjudication. Hence, the delay needs to be condoned and prayed to set aside the order passed by the Court below.

4.Per Contra, the learned counsel for the respondent submitted that the Nachammal is the daughter of the Senior Nachimuthu Gounder, who passed away in the year 1949, before the commencement of Hindu Successions Act, 1956, therefore, as per existing Act at the time of the death of Senior Nachimuthu Gounder, only male legal heirs are entitled for the ancestral property and female members are not entitled.

5.Further, he submitted that in the present case, the Revision Petitioners have not explained the reason for 1174 days delay. They have supposed to explain the reason for the delay. Originally, the application to restore the appeal in A.S.No.23 of 2013 was dismissed for default on 13.04.2014. Nachammal passed away on 25.06.2016, she has not taken any steps for restoration of the appeal when she was alive and also no reason has been provided by the legal heirs for the delay. Therefore, after consideration of all these aspect the Court below rejected the application for condoning the delay of 1174 days. The Court below taking into consideration of the various judgment passed by this Court as well as by the Hon'ble Apex Court has decided the matter on merits. Hence, the well reasoned order needs no interference and prayed to dismiss the Civil Revision Petition.

6.Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

7.Upon hearing the submissions, it appears that originally the property to the extent of 4 acres was purchased by the Senior Nachimuthu

Gounder in the year 1941. Out of which, he sold 3 acres and only 96 cents are remaining. The Senior Nachimuthu Gounder passed away in the year 1949. The Junior Nachimuthu Gounder, son of Senior Nachimuthu Gounder sold the suit schedule property to the respondent herein on 02.05.2008. In such circumstance, subsequent to the sale of the property, the Nachammal daughter of the Senior Nachimuthu Gounder filed the suit for partition in O.S.No.338 of 2009 and the same came to be dismissed by virtue of the application to reject the plaint filed by the respondent herein. Against the said order, the appeal in A.S.No.23 of 2013 was filed and the same was dismissed for default. Subsequently no steps were taken by Nachammal, the appellant to restore the appeal till her demise on 25.06.2016. Subsequently, the legal heirs of Nachammal filed the application to condone the delay of 1174 days in filing restoration application stating that they are not aware about the appeal in A.S.No.23 of 2013. However, they have not explained any reason for such a huge delay. In such circumstance, the Court below passed by the following order:

“13.The petitioners can invoke under Section 5 of the Limitation Act, because Order 41 Rule 19(1) and Sub-Rule (2) was permitted to invoke Section 5 of the Limitation Act.

But on the same time, the petitioners have to prove and subsequent for their non-apperance before this Court for such a long period. Now the petitioners stated that due to the sudden demise of the father and mother, it is really very embarrassing to routine their day-to-day affairs. In fact, the petitioners do not know about the appeal filed by the first petitioner. Except this nothing stated by the petitioner to prove their version. There is no documentary proof as well as oral evidence adduced by the petitioners/appellants to condone the delay. Even though the appeal dismissed on 03.04.2014, the appellant/plaintiff died on 25.06.2016 at that time of two years, no steps taken by the original appellant/plaintiff. The petitioners stated that because of the sudden demise of their father nothing done by her mother. But on the other hand, the respondent vehemently stated that the said Nachammal's (original appellant), husband died 20 years back. Even though the statement itself, the defendant/respondent stated that Nachammal's husband died 20 years back, no documentary proof filed by the petitioner to show the death of their father. The respondent stated that if the application allowed there will be no prejudice to the petitioner. But considering the delay of 1773 days the petitioner has to satisfy the legal provision.

14.In the case of Balwant Singh (Dead) -vs- Jagdish

Singh and Ors, of the Hon'ble Supreme Court of India reported in AIR-2010-SC-3043, Their Lordships had held that the statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications.

15.The petitioners had sought the mercy of the Court to condone the delay of 1173 days, the present application without giving even a single reason to condone the delay cannot be liberally construed. Under these circumstances, this Court is of considered view, the present application is devoid of merit.”

8.A perusal of the order passed by the Court below shows that, it has found that it is not a fit case to apply any such liberal approaches as stated by the Hon'ble Apex Court in various cases. Obviously, the liberal

approach varies from case to case and this Court is also of the view that such liberal approach will not apply for the present case for the simple reason that the delay has not been explained in a proper way. Before the death of the Nachammal, the appeal has been dismissed for default, the said Nachammal has also not taken any steps to restore the appeal for more than two years and after the period of one year from the death of Nachammal the legal heirs have taken steps without giving proper reasons. In such circumstance, this Court is of the considered view that there is no need for applying any liberal approach for condoning the delay and the Court below has rightly dismissed the application in I.A.No121 of 2017. Therefore, the Civil Revision Petition is deserves for dismissal.

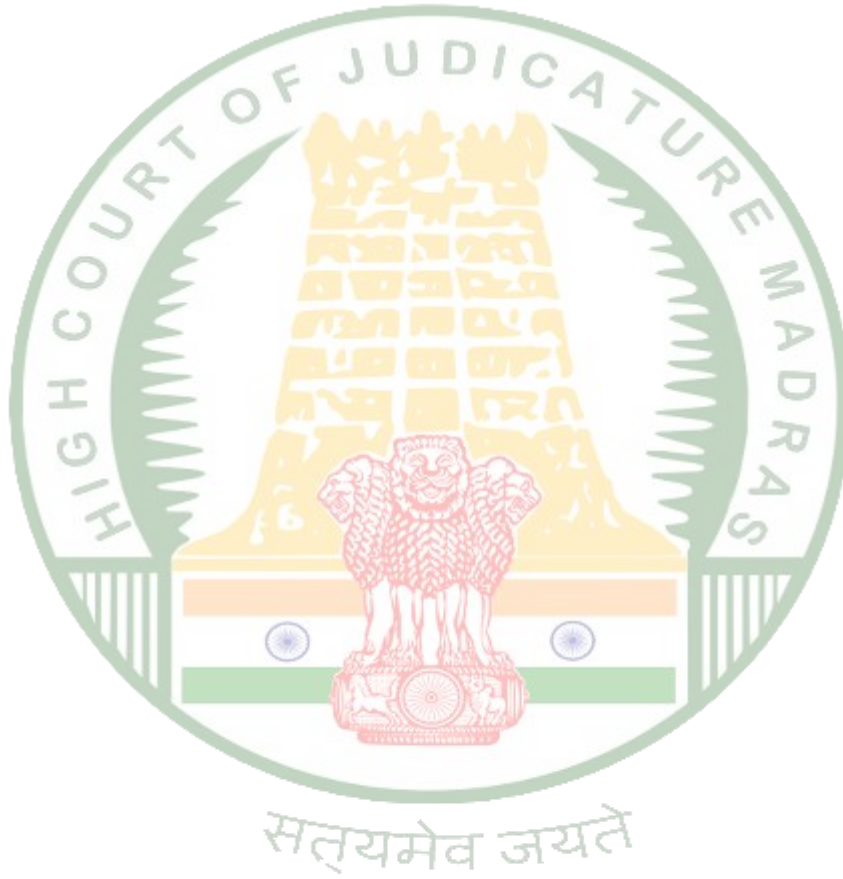
9.Accordingly, the Civil Revision Petition is dismissed. No costs.

03.03.2021

Index: Yes
Internet: Yes
Speaking Order
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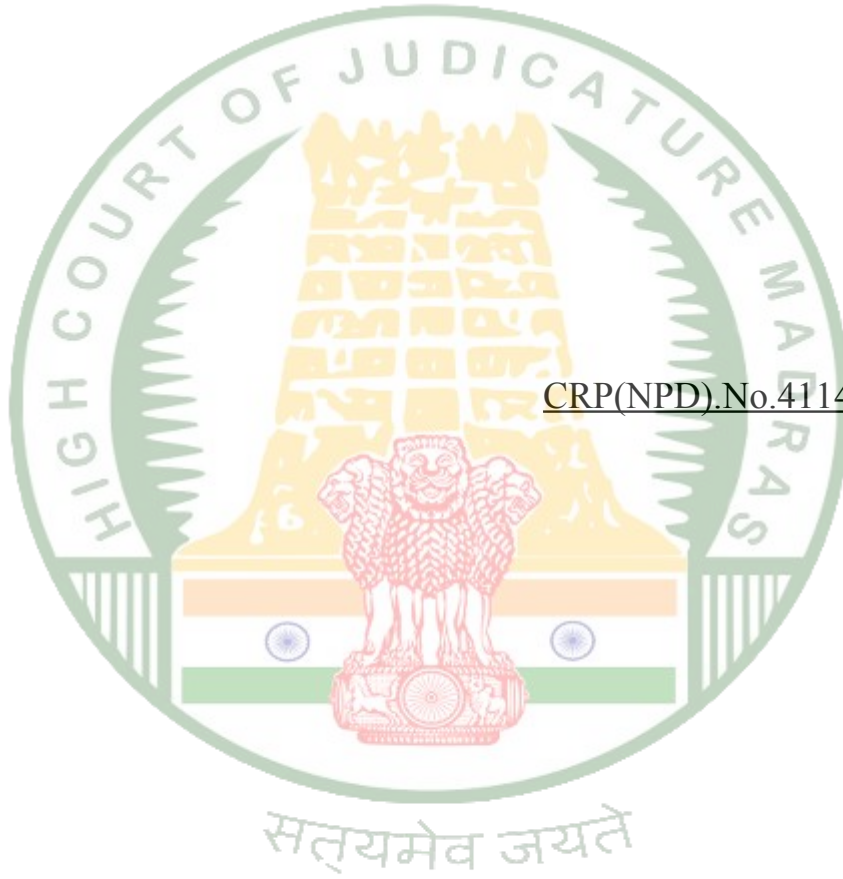
To:
The V Additional District Judge, Coimbatore.



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KRISHNAN RAMASAMY.J.,

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