

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM

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

CRP.PD.No.4175 of 2018 and
CMP.No.23006 of 2018

1.Nallasubramaniam
2.Rathinasamy
3.Susila
4.Shanthakumari

..Petitioners

Vs.

1.Selvakumar
P.K.Natarajan(died)
2.P.Thangarai
3.R.Somasundaram

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair order and decretal order dated 21.08.2018 passed in IA.No.24 of 2017 in AS.CFR.No.353 of 2017 on the file of the Principal District Judge, Tiruppur

For Petitioners : M/s.R.Sashe
for Mr.M.Guruprasad

For Respondents
For R1 : Mr.V.Srikanth

For R2 & 3 : Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed against the fair order and decretal order dated 21.08.2018 passed in IA.No.24 of 2017 in AS.CFR.No.353 of 2017 on the file of the Principal District Judge, Tiruppur, thereby allowing the petition to condone the delay in filing the appeal suit.

2. The petitioners are the plaintiffs and the first respondent is the second defendant. The petitioners filed suit for partition and it was allowed. Aggrieved by the same, the respondents 2 and 3 alone filed appeal suit in AS.No.34 of 2015, in which the first respondent herein is arrayed as sixth respondent. He was absent before the appellate court and the appeal filed by the respondents 2 and 3 herein was allowed. Aggrieved by the same, the petitioners preferred second appeal before this Court and it is pending in SA.No.50 of 2020. In the meanwhile, the first respondent herein also filed appeal suit as against the judgment and decree passed in the partition suit filed by the petitioners in OS.No.103 of 2006 dated 02.09.2015 with delay of 452 days in preferring the appeal suit. The same was allowed and aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioners would submit that there is lack of bonafide on the part of the first respondent since he has been watching the entire proceedings from the suit to the second appeal filed by the petitioners before this Court. In fact, the second and third respondents herein filed appeal suit, in which the first respondent wantonly failed to appear and he was set exparte. After watching the entire proceedings, all of sudden, he come forward with the appeal suit with delay of 452 days. He also stated very flimsy reason to condone the delay of 452 days. Though the first respondent failed to state sufficient cause, the court below erroneously allowed the petition.

4. On perusal of the affidavit filed in support of the condone delay petition revealed that his counsel informed that the copy application was not ready and the petitioner had no other option than to believe the same. Thereafter, he was informed that the previous copy application was misplaced and could not be traced out. Therefore, he filed another copy application with the certified copy of the judgment and decree and immediately filed appeal suit.

5. The learned counsel for the first respondent also submitted that the petitioners filed suit for partition as against their father, who

was arrayed as first defendant in the suit. The case of the first respondent is that he purchased the property in the year 2001 and he has got valid case to set aside the judgment and decree passed by the court below in the appeal suit. Though the petitioners filed second appeal as against the appeal suit in AS.No.34 of 2015 filed by the respondents 2 and 3 herein, they cannot prevent the first respondent to file appeal suit. Therefore, the court below rightly allowed the petition and this Court finds no infirmity or illegality in the order passed by the court below.

6. Accordingly, this civil revision petition is dismissed. However, the first respondent shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) as costs directly to the petitioners within a period of two weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

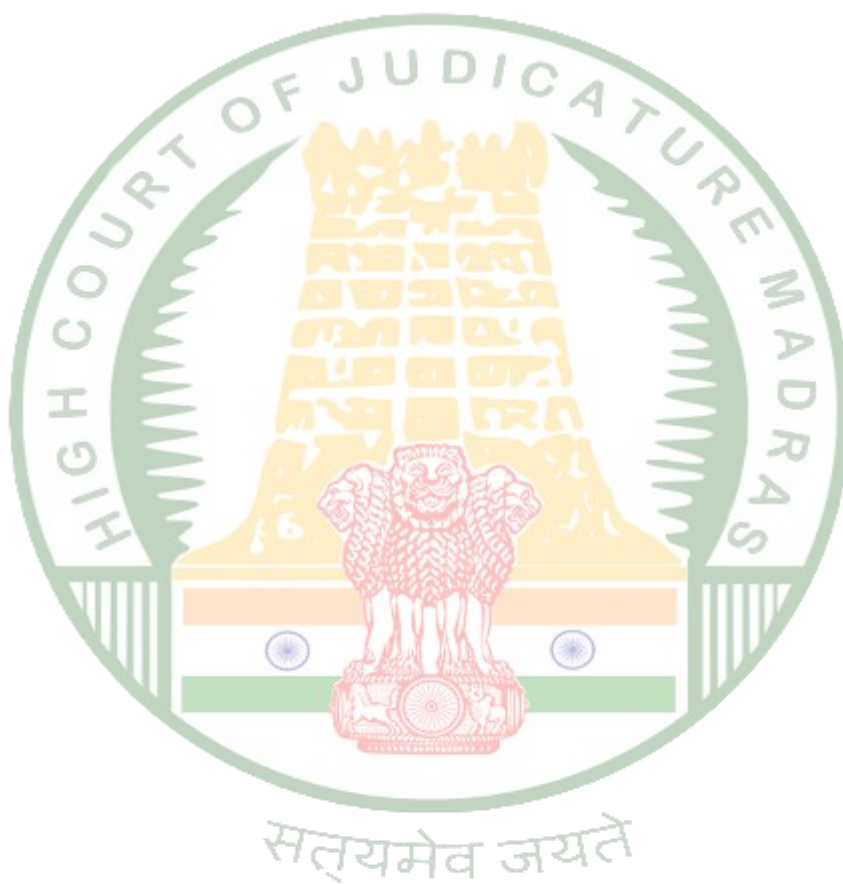
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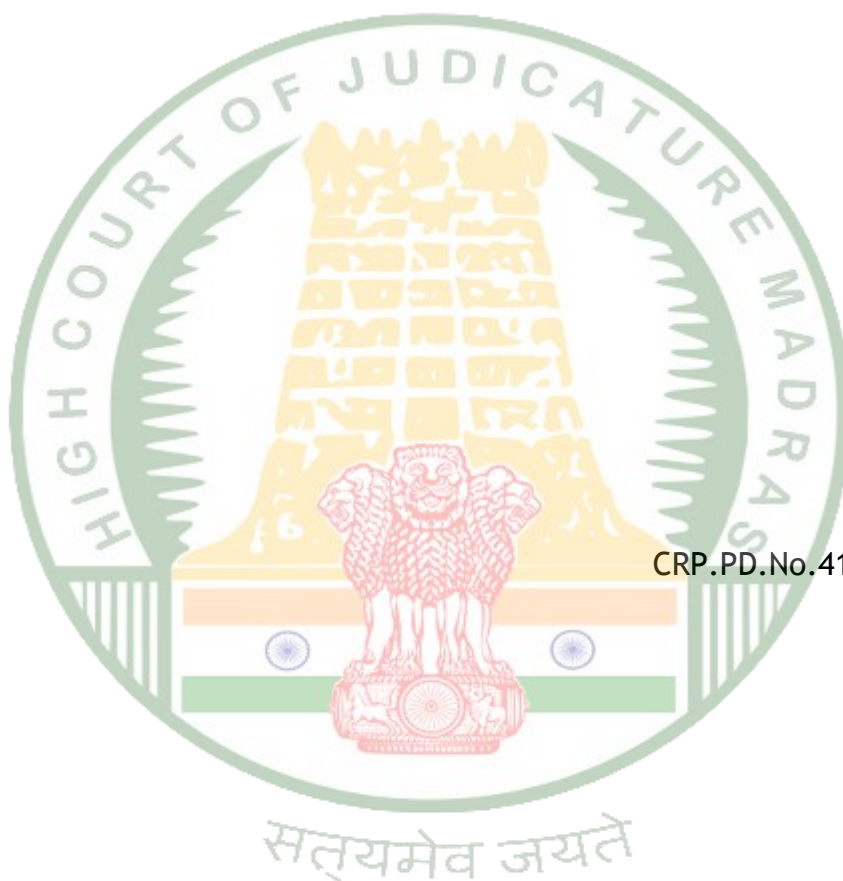
The Principal District Judge,
Tiruppur



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G.K.ILANTHIRAIYAN,J.

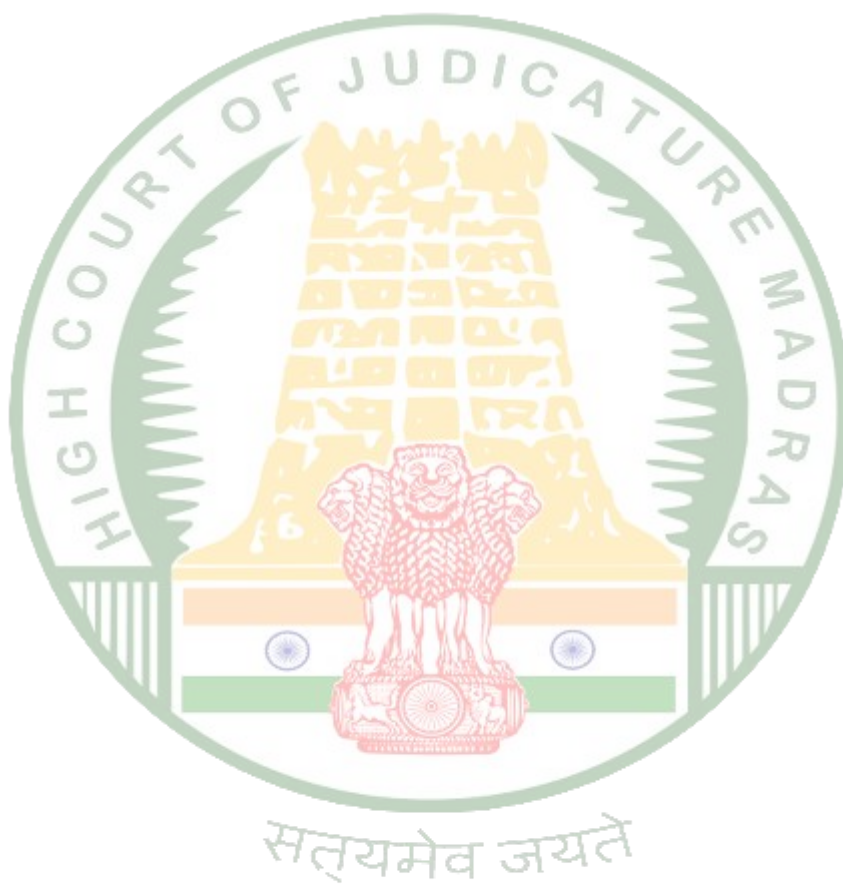
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