

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.382 of 2014
& M.P.No.1 of 2014

1. Chinnadurai
2. Thambidurai
3. Egavalli

.. Petitioners

Vs.

1. Sulochana
2. Kalaivanan
3. Kadiravan
4. Sasikumar
5. Kalaivani
6. Suganthi
7. Dhanalakshmi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 05.06.2013 made in I.A.No.1853 of 2012 in O.S.No.360 of 2003 on the file of the Principal District Munsif, Tindivanam.

For Petitioners : Mr.T.Dhanasekaran

For Respondents : Mr. K.A. Vimal Kumar

ORDER

This Civil Revision Petition has been filed against the order and decree dated 05.06.2013 made in I.A.No.1853 of 2012 in O.S.No.360 of 2003 on the file of the Principal District Munsif, Tindivanam.

2. The petitioners are the defendants 2 to 4 and one Ganesan, husband of 1st respondent and father of respondents 2 to 7 is the plaintiff in O.S.No.360 of 2003. Originally, the said Ganasen filed a suit for declaration and permanent injunction and he died on 09.10.2011. The respondents filed an application in I.A.1853 of 2012 to condone the delay in setting aside the abatement and to set aside the abatement. According to the respondents, after the death of Ganesan, his wife went to her parents house and therefore they could not meet the Advocate and take steps immediately. Subsequently, she met an Advocate and filed the present application.

4. The petitioners filed counter and opposed the same and submitted that the respondents did not properly explain the delay. They entered appearance in O.S.No.249 of 2011 and another application in I.A.No.1969 of 2011 has been filed by the respondents for impleading them legal heirs of deceased Ganesan in O.S.No.249 of 2011 filed by the petitioners against Ganesan and they knew about the pendency of the present suit and did not take any steps in time.

5. The learned Judge considering the averments made in the plaint, affidavit, counter affidavit, materials available on record allowed the application in order to give an opportunity to the respondents to put forth the case on merits.

6. Against the said Order dated 05.06.2013 made in I.A.No.1853 of 2012, the present civil revision petition is filed.

7. Heard the learned counsel for the petitioners, learned counsel for the respondents and perused the materials available on record.

8. The grievance of the petitioners is that without considering the objections of the petitioners, the learned Judge has allowed the application filed by the respondents in one line order without giving any reasons. The petitioners have stated that the learned Judge without considering the application filed by the respondents to condone the delay in setting aside the abatement, had allowed the application to set aside the abatement.

9. It is well settled that the parties must be given opportunity to put forth their case on merits and they should not be shut down at the threshold stage. The intention of parties whether malafide or bonafide is the criteria to decide the application. In the present case, the learned Judge has allowed the application in order to give opportunity to the respondents to put forth their case on merits. The respondents are the legal heirs of the deceased plaintiff, Ganesan, who has filed the suit for declaration and injunction. The petitioners have also filed a suit in O.S.No.249 of 2011 against the said deceased Ganesan and respondents herein were impleaded as defendants in the said suit filed by the petitioners. In view of the above facts and circumstances, there is no irregularity or illegality in the order passed by the learned Judge in allowing the application in order to give opportunity to put forth their case.

10. The petitioners contented that the learned Judge did not consider that the respondents have filed only two applications, to condone the delay in setting aside the abatement and to set aside the abatement, but the respondents did not file any application under Order 22 Rule 3 Civil Procedure Code to bring the respondents record. Taking into consideration that already the

respondents are brought on record, as legal heirs of deceased, Ganesan in O.S.No.249 of 2011 filed by the petitioners, to give opportunity to the respondents to contest the case filed by the deceased Ganesan, it is open to the respondents to file a petition to bring them on record in the present O.S.No.360 of 2003 within two weeks from the date of receipt of a copy of this order. If such an application is filed, the learned Judge is directed to consider the same and pass orders within a period of two weeks thereafter. Since the suit, O.S.No.360 of 2003 is of the year 2003, the learned Principal District Munsif, Tindivanam is directed to dispose of the said suit within a period of three months thereafter.

11. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

28.06.2017

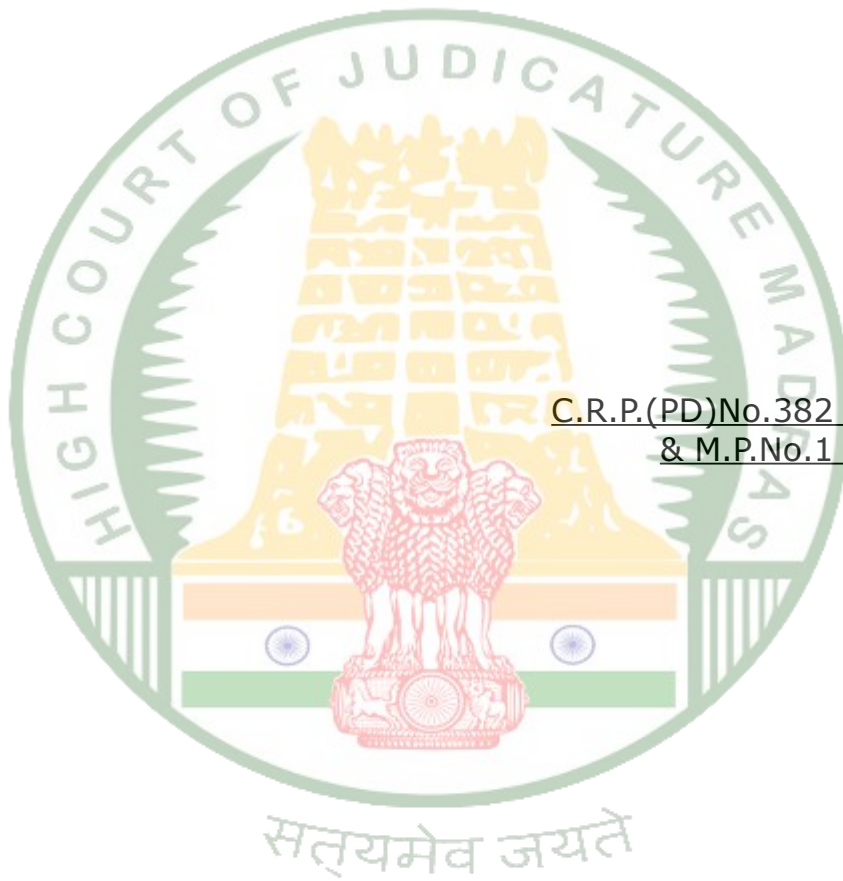
Speaking Order/Non-speaking Order
Index :Yes/No
av / ssd

To

The Principal District Munsif,
Tindivanam

V.M.VELUMANI, J.

av/ssd



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