

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1732 of 2015
& M.P.No.1 of 2015

V.Ponnusamy

.. Petitioner

Vs.

1.S.Somasundaram

2.S.Meenakshi Sundaram (Died)

3.S.Vatchala Devi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 29.08.2013, passed by I Additional Subordinate Judge, Coimbatore in I.A.No.269 of 2011 in O.S.No.295 of 2007.

For Petitioner : Mr.R.Bharath Kumar

For R1 : Mr.L.Mouli

For R2 : Died

For R3 : Not ready in notice

ORDER

WEB COPY

This Civil Revision Petition is filed against the fair and decretal order dated 29.08.2013, passed by I Additional Subordinate Judge, Coimbatore in I.A.No.269 of 2011 in O.S.No.295 of 2007.

2.The petitioner is the plaintiff, respondents 1 and 3 are the defendants 2 and 3 in O.S.No.295 of 2007 on the file of the I Additional Subordinate Court, Coimbatore. The petitioner filed the said suit against the respondents 1 and 3 and one another for specific performance. An exparte decree was passed on 28.01.2008. The petitioner filed E.P.No.61 of 2010 to execute the decree. The first respondent/second defendant filed I.A.No.269 of 2011 to condone the delay of 973 days in filing the petition to set aside the exparte decree dated 28.01.2008. According to the first respondent, neither notice nor suit summons were served on him to the address 69 part, Ramasamy Naidu Layout, Avarampalayam, Ganapathy (Post) Coimbatore-6, where he is residing. Only when he came to his native place, the first respondent came to know that petitioner is claiming title over the property. He has not engaged any Advocate by name N.Vijayakumar or anybody else. His signature has been forged in the vakalat as though he has engaged an Advocate by name N.Vijayakumar.

3. The petitioner filed counter affidavit and opposed the said application. According to the petitioner, the suit summons were served on the first respondent. He engaged an Advocate but

subsequently did not contest the case. He has not explained the reasons for delay of 973 days and prayed for dismissal of the application.

4.The learned Judge, considering the averments in the affidavit, counter affidavit and materials available on Court records, found that neither notice nor summons were served on the first respondent. In spite of the same, vakalat has been filed on his behalf and on the next hearing date, there was no representation on his behalf and exparte decree was passed. The learned Judge also having found out that vakalat alleged to have been filed on behalf of the first respondent was missing from the Court bundle, allowed the application.

5.Against the said order dated 29.08.2013 made in I.A.No.269 of 2011 in O.S.No.295 of 2007, the present Civil Revision Petition is filed by the petitioner.

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

7. From the order of the learned Judge, it is seen that in the docket sheet, it has been clearly mentioned that neither notice nor summons were served on the first respondent and in spite of the same, vakalat has been filed on behalf of the first respondent. Curiously, on the next day of hearing, there was no representation on behalf of the first respondent and he was set ex parte and ex parte decree was passed. From the order of the learned Judge, it is seen that vakalat filed on behalf of the first respondent is missing from the Court bundle. In view of the same, the learned Judge has allowed the application filed by the first respondent to give an opportunity to the first respondent to contest the matter on merits. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 29.08.2013, made in I.A.No.269 of 2011 in O.S.No.295 of 2007.

8. In the result, this Civil Revision Petition is dismissed. However, no order as to costs. Consequently, connected Miscellaneous Petition is closed.

12.12.2017

Index: Yes/No

gsa

Note : Issue order copy by 02.04.2018

To

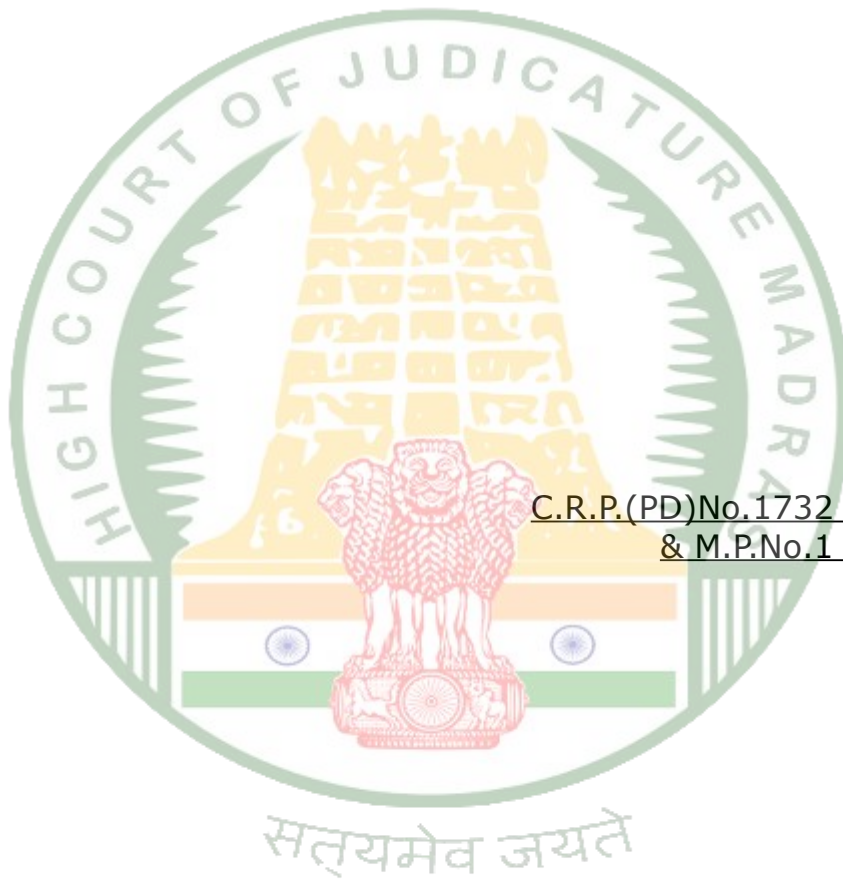
The I Additional Subordinate Judge,
Coimbatore



WEB COPY

V.M.VELUMANI,J.

gsa



C.R.P.(PD)No.1732 of 2015
& M.P.No.1 of 2015

WEB COPY

12.12.2017