

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.551 of 2014

1.Balammal  
2.Ramesh  
3.Varalakshmi  
4.Sekar @ Gunasekaran

.. Petitioners

Vs.

V.Sankaraiah

.. Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.09.2013 made in C.M.A.No.1 of 2012 on the file of the learned Subordinate Court, Gudiyatham, confirming the fair and decretal order dated 25.11.2010 made in I.A.No.796 of 2010 in O.S.No.389 of 1994 on the file of the learned District Munsif Court, Gudiyatham.

For Petitioners : Mr.N.Manokaran

For Respondent : No appearance

**ORDER**

This Civil Revision Petition has been filed against the fair and decretal order dated 23.09.2013 made in C.M.A.No.1 of 2012

on the file of the learned Subordinate Court, Gudiyatham, confirming the fair and decretal order dated 25.11.2010 made in I.A.No.796 of 2010 in O.S.No.389 of 1994 on the file of the learned District Munsif Court, Gudiyatham.

2.The petitioners are the plaintiffs and respondent is the defendant in O.S.No.389 of 1994. The petitioners filed the said suit against the respondent for declaration and consequential injunction. The said suit was dismissed for default on 04.02.2010. The petitioners filed I.A.No.796 of 2010 to set aside the exparte order. According to the petitioners, the petitioners 1 and 4 were present in the Court. They could not let in evidence as some vital documents were not available with them.

3.The respondent filed counter affidavit and opposed the said application and submitted that the suit was dismissed for default for fourth time. The petitioners were not present on the date of hearing. Their intention is only to drag on the proceedings and prayed for dismissal of the application.

4.The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the application by the order dated 25.11.2010. Against the said order dated 25.11.2010, made in I.A.No.796 of 2010, the petitioners filed C.M.A.No.1 of 2012 on the file of the Subordinate Court, Gudiyatham. The learned Subordinate Judge dismissed the C.M.A.No.1 of 2012 by the order dated 23.09.2013.

5.Against the said order dated 23.09.2013, made in C.M.A.No.1 of 2012, confirming the order dated 25.11.2010, made in I.A.No.796 of 2010 in O.S.No.389 of 1994, the petitioners have come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioners and perused the materials available on record. Though notice is served on the respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

7.From the records, it is seen that the petitioners have filed application for restoration of the suit dismissed for default on the ground that the petitioners 1 and 4 appeared before the Court

and some of the vital documents were not available with them and therefore, they could not let in evidence. While so, during arguments before the learned Judge as well as before the learned Appellate Judge, they have stated that to attend the funeral they went to Bangalore. The Courts below rejected the contention of the petitioners on the ground that the petitioners have not given sufficient and valid reason for restoration of the suit.

8. The learned counsel for the petitioners submitted that the petitioners will cooperate in conducting the suit and a direction may be issued to the learned Judge to dispose the suit within the time frame fixed by this Court. The suit is for declaration and injunction. In order to give an opportunity to petitioners to put forth their case on merits, this Civil Revision Petition is allowed on payment of a cost of Rs.5000/- to the **“the Hon'ble Chief Justice Relief Fund, High Court, Madras”** within a period of one week, failing which the Civil Revision Petition shall stand dismissed. The learned Judge is directed to dispose the suit as expeditiously as possible in any event not later than three months from the date of receipt of a copy of this order, after issuing notice to respondent and giving opportunity to the parties to put forth their case. The

petitioners are directed to cooperate in the conduct of trial without seeking unnecessary adjournments.

9.In the result, this Civil Revision Petition is allowed. No costs.

21.11.2017

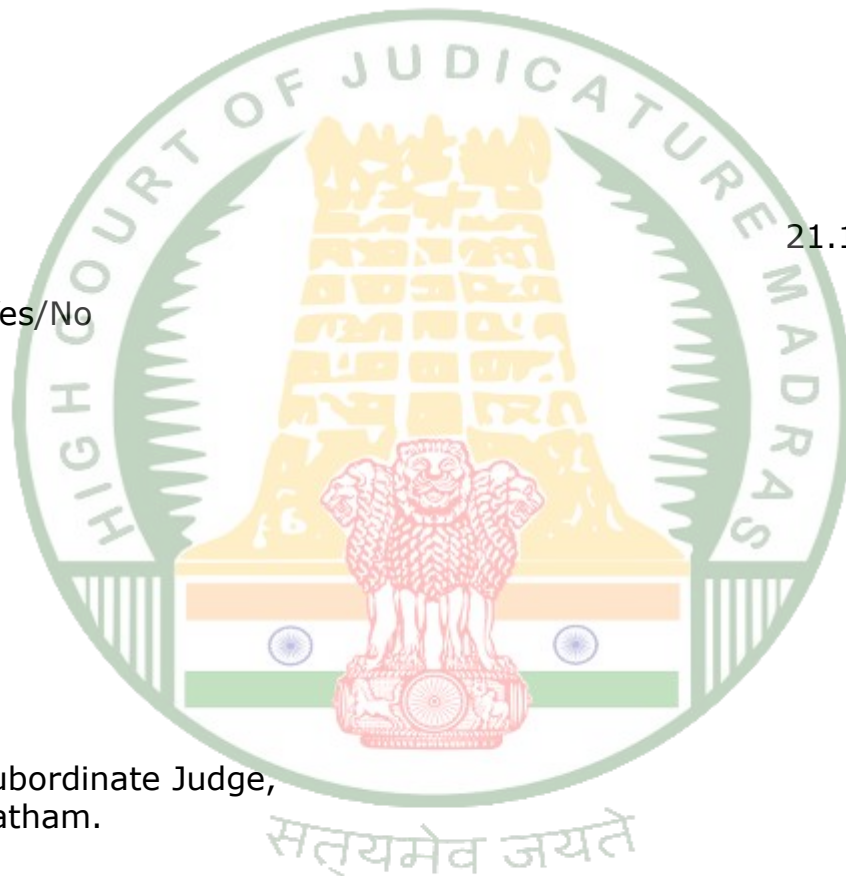
Index: Yes/No

gsa

To

1.The Subordinate Judge,  
Gudiyatham.

2.The District Munsif,  
Gudiyatham.



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**V.M.VELUMANI,J.**

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