

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4697 of 2015
& C.M.P.No.7728 of 2016

R.Karunanithiammal .. Petitioner

Vs.

Abdul Azeez .. Respondent

(Cause title amended vide Court order dated 16.11.2017 made in C.M.P.No.6323 of 2017 in C.R.P.No.4697 of 2017.)

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the fair and decretal order dated 12.11.2014 made in I.A.No.1909 of 2012 in O.S.No.234 of 2010 on the file of the Principle District Munsif Court, Tindivanam.

For Petitioner : Mr.R.K.Karunakaran

For Respondent : Mr.B.Thirumalai

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 12.11.2014 made in I.A.No.1909 of 2012 in O.S.No.234 of 2010 on the file of the Principle District Munsif Court,

Tindivanam.

2.The petitioner is the plaintiff and respondent is the defendant in O.S.No.234 of 2010 on the file of the the Principal District Munsif Court, Tindivanam. The petitioner filed the said suit for declaration of his title in respect of the property and for possession. The respondent remained exparte and the suit was decreed exparte on 16.03.2011. The petitioner filed E.P.No.47 of 2011 for execution of the decree. The respondent filed I.A.No.1909 of 2012 to condone the delay of 181 days in filing the petition to set aside the exparte decree passed on 16.03.2011. According to the respondent, on receipt of suit summons, he engaged an Advocate by name Y.Ajmal Alee who informed him that he will intimate him for filing the written statement. The respondent did not receive any information from the Advocate. Subsequently, from February 2011, the respondent suffered from fever and was affected by Jaundice. He was bedridden and was taking native treatment. Due to the same, he could not meet his Advocate. When he received notice from the Court, he enquired his Advocate with the help of his friend, wherein he was informed that exparte decree was passed on 16.03.2011. Thereafter, he immediately filed the application.

3.The petitioner filed counter affidavit and denied all the averments made in the affidavit filed by the respondent in support of the above application.

4.Before the learned Judge, the respondent examined himself as PW1 and his father-in-law was examined as PW2 and marked 2 documents as Exs.A1 and A2. The petitioner examined herself as RW1 and marked 2 documents as Exs.R1 and R2.

5.The learned Judge, considering the averments in the affidavit, counter affidavit, oral and documentary evidence and judgments relied on by the parties, allowed the application on payment of a cost of Rs.1000/- payable by the respondent to the petitioner.

6.Challenging the said order dated 12.11.2014 made in I.A.No.1909 of 2012 in O.S.No.234 of 2010, the petitioner has filed the present Civil Revision Petition.

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

8.From the materials on record, it is seen that the respondent has proved by both oral and documentary evidence, the illness suffered by him. The learned Judge also took note of the fact that notice in E.P was served on the respondent on 11.10.2013 and respondent has filed present application within 2 days thereafter. The petitioner has not let in any contra evidence. The learned Judge has allowed the application by giving cogent and valid reason and has rightly imposed a cost of Rs.1000/- to compensate the petitioner. In the circumstances, there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 05.11.2014.

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

WEB COPY

23.11.2017

Index: Yes/No

gsa

To

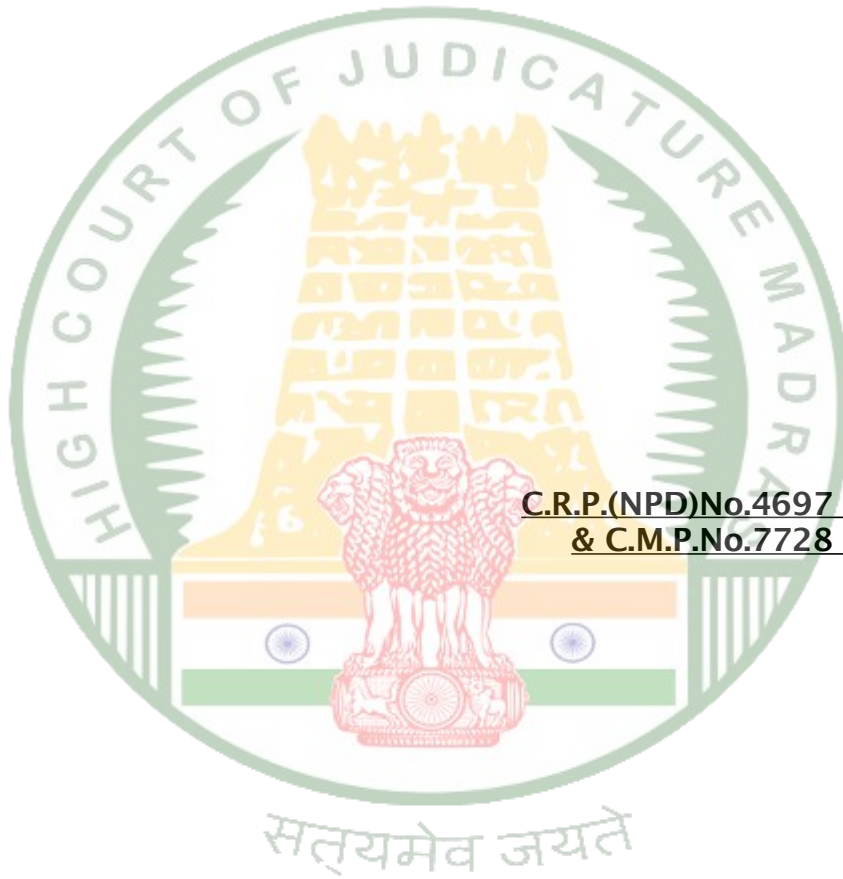
The Principle District Munsif,
Tindivanam.



WEB COPY

V.M.VELUMANI,J.

gsa



C.R.P.(NPD)No.4697 of 2015
& C.M.P.No.7728 of 2016

WEB COPY

23.11.2017