

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.542 of 2015
& M.P.No.1 of 2015

S.Gnanasekar .. Petitioner

Vs.

T.Thulasi .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 11.12.2014 made in I.A.No.811 of 2014 in O.S.No.165 of 2009 on the file of the Additional District Munsif Court, Vaniyambadi, Vellore district.

For Petitioner : Mr.P.S.kothandaraman

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 11.12.2014 made in I.A.No.811 of 2014 in O.S.No.165 of 2009 on the file of the Additional District Munsif Court, Vaniyambadi, Vellore district.

2.The petitioner is defendant and respondent is the plaintiff in O.S.No.165 of 2009 on the file of the Additional District Munsif Court, Vaniyambadi, Vellore district. The respondent filed the said suit against the petitioner for declaration and consequential injunction. The petitioner filed written statement on 16.08.2010 and is contesting the suit. Trial commenced. The respondent let in evidence and closed her side. The petitioner examined himself as DW1 and closed his side evidence on 02.07.2014 and the suit was posted for further evidence on behalf of the petitioner. The petitioner did not examine any other witnesses even after taking 20 adjournments. The evidence on behalf of the petitioner was closed.

3.The petitioner filed I.A.No.542 of 2014 for reopening the case to examine 10 witnesses. The said application was allowed on payment of cost of Rs.1000/-. The petitioner paid batta for only 4 witnesses out of 10 witnesses. Summons were served only on one witness and summons on other witnesses were not served. The witness on whom the summon was served was not present on 01.11.2014. The case was posted to 11.11.2014 and 14.11.2014. On those days also, the witness was not present. The evidence on behalf of the petitioner was closed.

4.The petitioner filed I.A.No.811 of 2014 under Section 151 of Code of Civil Procedure to reopen the case and examine the witness.

5.The respondent opposed the same by filing counter affidavit and submitted that this application is only a delaying tactics of the petitioner in prolonging the suit proceedings.

6.The learned Judge dismissed the application, considering the above facts, holding that the intention of the petitioner is only to drag on the proceedings.

7.Against the said order of dismissal dated 11.12.2014, made in I.A.No.811 of 2014 in O.S.No.165 of 2009, the present Civil Revision Petition is filed by the petitioner.

8.Heard the learned counsel for the petitioner and perused the materials available on record. Though the respondent entered appearance through counsel, there is no representation either in person or through counsel.

9.The learned counsel for the petitioner contended that once summon is served on the witness, if witness fails to appear to give evidence, the Court must take coercive steps, including issue of warrant to the said witness as per Section 30 and Order XVI Rule 10 of C.P.C. The summons were not served on other three witnesses. The learned Judge either ought to have waited for service of summons on other witnesses or ordered fresh summons to the witnesses. Without following the procedure, the learned Judge dismissed the application. This contention has considerable force.

10.From the records, it is seen that petitioner has paid batta to serve four witnesses to give evidence on his behalf. The summons were served only on one witness and on the date of hearing, the said witness was not present. The summons issued to other three witnesses were not served. The learned Judge ought to have taken steps for appearance of the witness on whom the summon was served as Court has ordered summoning of witnesses. Similarly, the learned Judge ought to have issued fresh summons to serve other three witnesses or adjourned the case if the summons returned either served or unserved. In view of the failure on the learned Judge to follow the procedure contemplated in the C.P.C,

the impugned order of the learned Judge dated 11.12.2014, made in I.A.No.811 of 2014 in O.S.No.165 of 2009 is liable to be set aside and is hereby set aside.

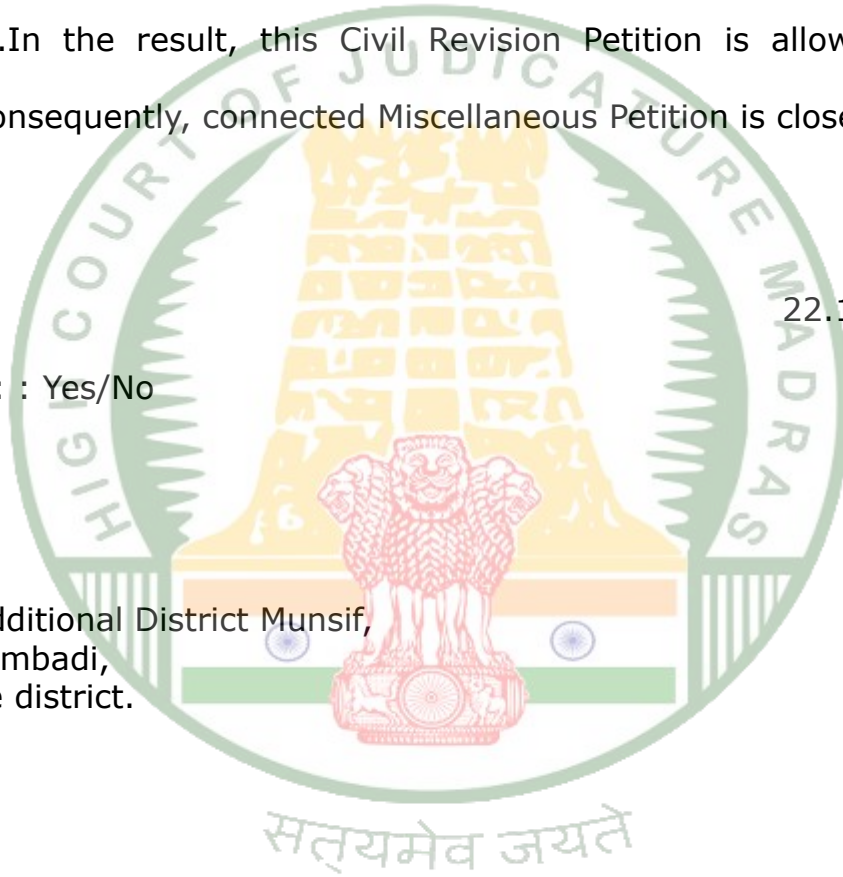
11.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.12.2017

Internet: : Yes/No
gsa

To

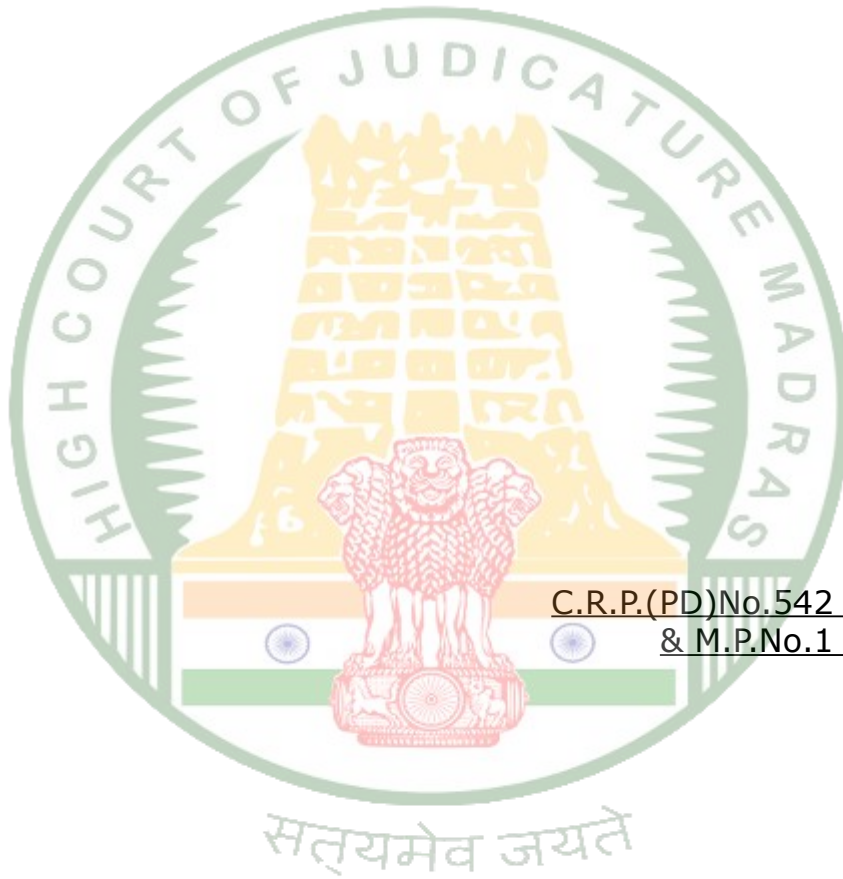
The Additional District Munsif,
Vaniyambadi,
Vellore district.



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V.M.VELUMANI,J.

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