

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.554 of 2015
& M.P.No.1 of 2015

S.Jayanthi

.. Petitioner

Vs.

Menaka

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 14.02.2014 in I.A.No.110 of 2013 in O.S.No.4035 of 2012 on the file of the XVIII Additional City Civil Court, Chennai.

For Petitioner : Mr.V.G.Suresh Kumar

For Respondent : M/s.J.Kavitha
for Mr.S.Parthasarathy

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 14.02.2014 in I.A.No.110 of 2013 in O.S.No.4035 of 2012 on the file of the XVIII Additional City Civil Court, Chennai.

2.The petitioner is 7th defendant and respondent is plaintiff in

O.S.No.4035 of 2012 on the file of the XVIII Additional City Civil

Court, Chennai. The respondent filed the said suit against the petitioner and other defendants for declaration of sale deeds dated 14.09.2010, 30.06.2011, 30.06.2011, 29.06.2011, 06.07.2011, 06.07.2011 and 14.07.2911 as null and void, for passing preliminary decree, to allot 1/5th share to the respondent and for a permanent injunction restraining the petitioner and other defendants from alienating the suit property in favour of third party.

3. According to the petitioner, on receipt of summons, she engaged an Advocate to defend her case and gave instructions to put forth her case on merits. On that day, she was under impression that she signed the vakalat and gave the same to the Advocate. Later, she came to know that she did not give the vakalat to her Advocate. When her Advocate tried to file vakalat, the same was refused by the Court. She was set exparte and exparte order was passed on 07.12.2012. The petitioner filed I.A.No.110 of 2013 to set aside the exparte order dated 07.12.2012. She filed written statement along with the present application.

4. The learned Judge considering the provision that the written statement should either be filed within 30 days or extended period of 90 days by the Court and following the judgment of this Court

another Vs. Athreya Incorporations, rep by its Proprietor, S.R.Subramanian), dismissed the application on the ground that petitioner failed to file written statement within the time prescribed as per the amended Civil Procedure Code and petitioner has not filed any application to condone the delay in filing the application.

5. Against the said order of dismissal dated 14.02.2014, made in I.A.No.110 of 2013 in O.S.No.4035 of 2012, the present Civil Revision Petition is filed by the petitioner.

6. Heard the learned counsel for both the parties and perused the materials available on record.

7. As per the amended Civil Procedure Code, the Court has power to extend the time for filing written statement even beyond 90 days, if the defendant gives valid reason for the same. In the present case, the petitioner was set exparte as vakalat was not filed on her behalf and written statement sought to be filed was not received by the Court as the petitioner has not filed vakalat through her Advocate. Considering these facts and contention of the learned counsel for the petitioner that the respondent can be compensated and application can be allowed, this Court in order to give an opportunity to the petitioner, set aside the impugned order of the

learned Judge dated 14.02.2014 made in I.A.No.110 of 2013 in O.S.No.4035 of 2012, on condition that petitioner pays a sum of Rs.5,000/- as cost to the counsel Mrs.J.Kavitha, No.295, Law Chambers, High Court, Chennai 104, appearing for the respondent on or before two weeks from the date of receipt of a copy of this order. On such payment and on filing the proof of payment, the learned Judge is directed to receive the written statement on file and proceed with the suit in accordance with law. If petitioner fails to pay the cost as ordered by this Court within the time stipulated, this Civil Revision Petition stands dismissed.

8. With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.12.2017

Internet: : Yes/No
gsa

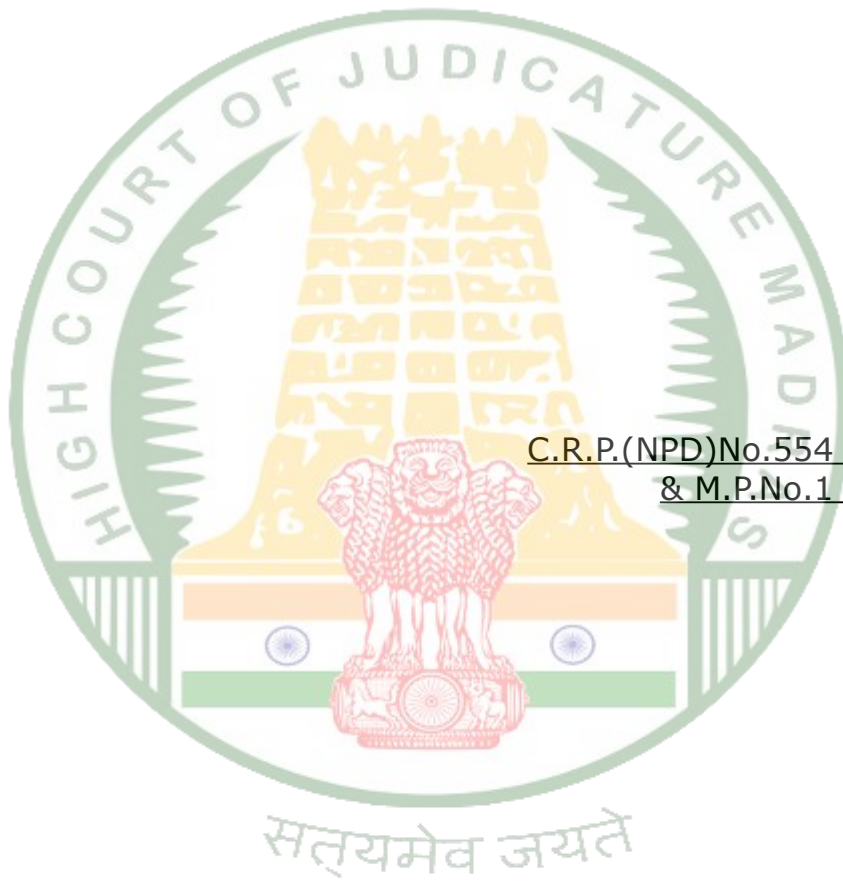
To

The XVIII Additional Judge,
City Civil Court,
Chennai.

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V.M.VELUMANI,J.

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