

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3608 of 2013

G.Sulochana

.. Petitioner

Vs.

- 1.Shanmugam
- 2.Venkatesan
- 3.Natarajan
- 4.Thirumalai Chettiar (Deceased)
- 5.The Sub-Registrar,
SRO Royapuram, Chennai 600 021.
- 6.Radhammal
- 7.Mohan
- 8.Sampath
- 9.Poornimal
- 10.Indhira

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 16.07.2013 made in I.A.No.10 of 2012 in O.S.No.3516 of 2004 on the file of the II Assistant City Civil Court, Chennai.

For Petitioner : Mr.P.S.Ganesh

For R1 : Mr.M.Devendran

For R2 & R3 : No appearance

For R4 : Died

For R5 to R10 : Not ready in notice

ORDER

This Civil Revision Petition is filed against the order dated 16.07.2013 made in I.A.No.10 of 2012 in O.S.No.3516 of 2004 on the file of the II Assistant City Civil Court, Chennai.

2.The petitioner is plaintiff and respondents are the defendants in O.S.No.3516 of 2004 on the file of the II Assistant City Civil Court, Chennai. The petitioner filed the above suit claiming a sum of Rs.1,80,000/- as arrears of maintenance and for declaration to declare the two release deeds registered as Doc. Nos.2839 & 2840 of 2003 in favour of the respondents 2 and 3 respectively as null and void. Respondents 1 and 4 filed separate written statement and are contesting the suit. The petitioner was examined as PW1. The cross examination was completed by the counsel for the first respondent and the suit was posted for further cross-examination by the other respondents. The suit was dismissed for non-furnishing the proof affidavit of the petitioner to the counsel for the fourth respondent. On filing the I.A.No.25004 of 2009, delay was condoned and the suit was restored to file. Mean while, the

fourth respondent died. The respondents 6 to 10 were brought on record and amended copy of the plaint was filed. The suit was posted for further cross examination on 01.11.2011 and on that date, the suit was dismissed for default.

3.The petitioner filed I.A.No.10 of 2012 to restore the suit O.S.No.3516 of 2004 which was dismissed for default on 01.11.2011 and submitted that the colleague of his counsel has wrongly noted down the date as 11.11.2011 and therefore, she and her counsel were present before the Court on 11.11.2011 and on that date, the suit was not listed. On verification, they came to know that the suit was called on 01.11.2011 and dismissed for default. Non appearance on 01.11.2011 by the petitioner or her counsel is only due to the mistake in noting down the date wrongly.

4.The first respondent filed counter affidavit and opposed the said application.

5.The learned Judge, dismissed the application on the ground that petitioner is not diligent enough to prosecute the case.

6. Against the said order dated 16.07.2013 made in I.A.No.10 of 2012 in O.S.No.3516 of 2004, the petitioner has come out with the present Civil Revision Petition.

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

8. From the records, it is seen that according to the petitioner, she could not appear on 01.11.2011 for further cross examination on the ground that date of hearing was wrongly noted down as 11.11.2011. An affidavit to that effect was filed by the counsel for petitioner. There is no reason to dispute the contention of the petitioner. Taking into consideration the petitioner is aged about 80 years and she has filed the suit for recovery of arrears of maintenance, the order of the learned Judge dated 16.07.2013, made in I.A.No.10 of 2012 is set aside in the interest of justice to give an opportunity to the petitioner to put forth her case on merits and to prosecute the case against the respondents.

9. In the result, this Civil Revision Petition is allowed. No costs. The II Additional City Civil Judge is directed to dispose of the suit as

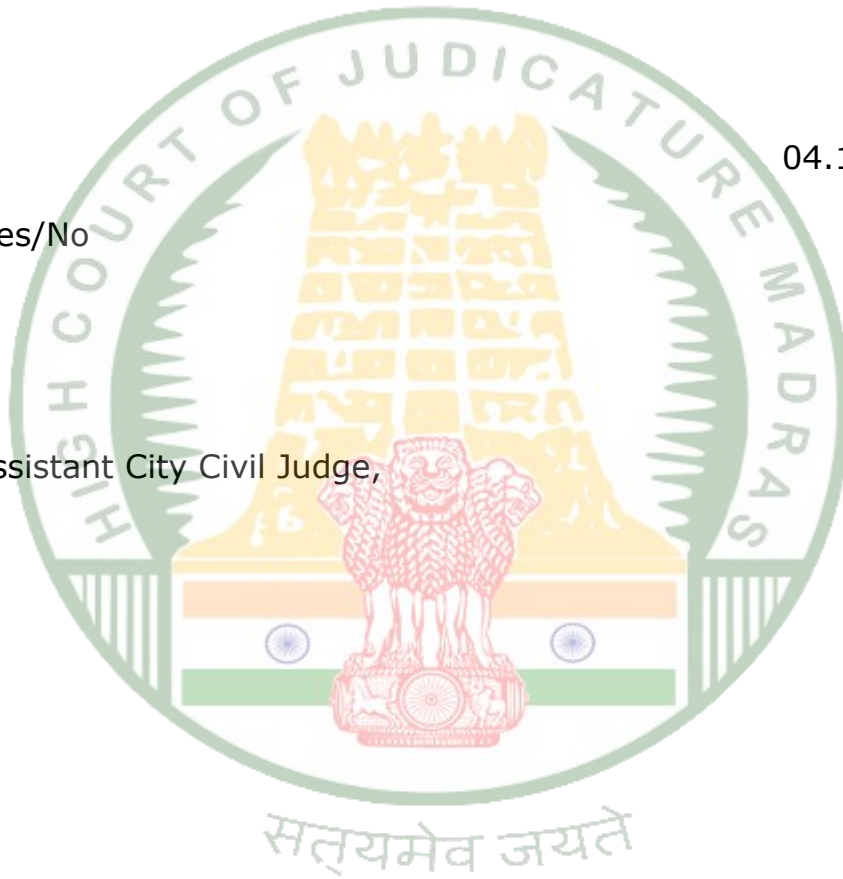
expeditiously as possible and in any event not later than two (2) months from the date of receipt of a copy of this order. The petitioner is directed to appear before the Court and cooperate in conducting the trial.

04.12.2017

Index: Yes/No
gsa

To

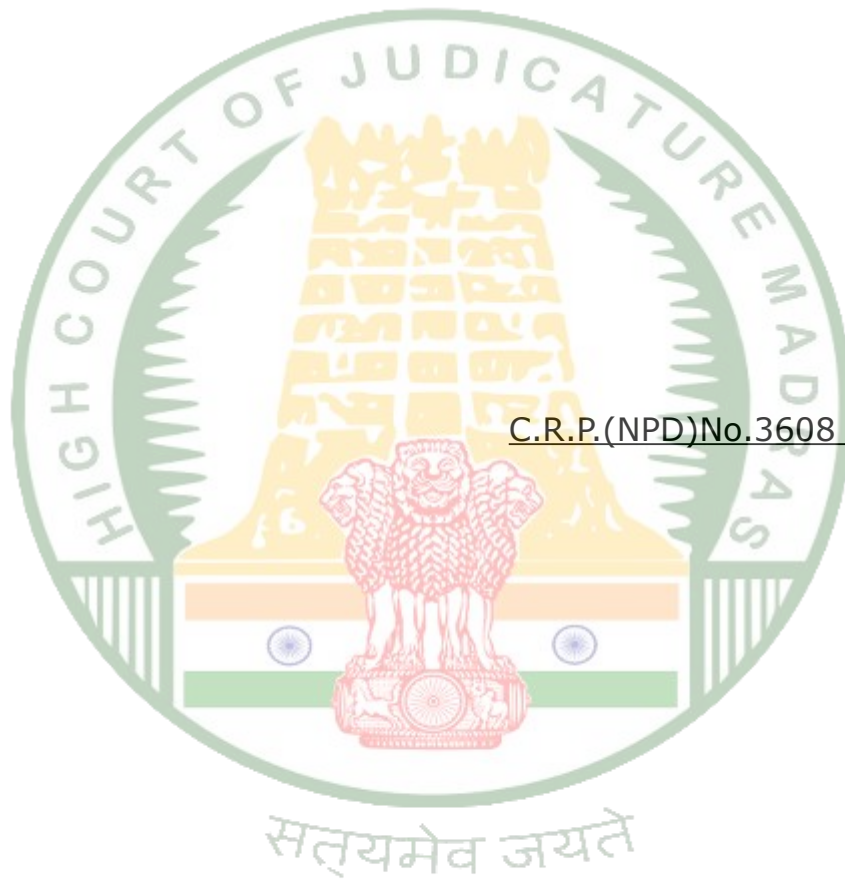
The II Assistant City Civil Judge,
Chennai.



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V.M.VELUMANI,J.

gsa



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