

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD) No.661 of 2013
M.P.No.1 of 2013

The Commissioner,
Avadi Municipality, Avadi

.. Petitioner

Vs.

K.Natarajan (Deceased)

1.Rajalakshmi

2.Revathy

3.Mano Deepan

4.Thamarai Selvan

5.Poongodi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.10.2012 made in I.A.No.107 of 2012 in O.S.No.80 of 2000 on the file of the Additional District Munsif Court, Poonamallee.

For Petitioner : Mr.P.Srinivas

For Respondents : Mr.R.Bharath Kumar

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 11.10.2012 made in I.A.No.107 of 2012 in O.S.No.80 of 2000 on the file of the Additional District Munsif Court, Poonamallee.

2. The petitioner is third defendant, respondents are the legal heirs of one K.Natarajan in O.S.No.80 of 2000 on the file of the Additional District Munsif Court, Poonamallee. The said K.Natarajan filed the said suit against the petitioner and two others for permanent injunction, restraining the petitioner and two others from forming any road in the suit property or from interfering with his peaceful possession and enjoyment of the suit property. The petitioner entered appearance through Advocate who failed to file written statement and contest the suit. An exparte decree was passed on 19.02.2003 against the petitioner. The respondents who are the legal heirs of the said K.Natarajan filed two Execution Petitions in E.P.No.35 and 36 of 2010 for recovery of cost and for arresting and detaining the petitioner in civil prison. The petitioner filed I.A.No.107 of 2012 to condone the delay of 3186 days in filing the petition to set aside the exparte decree dated 19.02.2003. According to the petitioner, due to communication gap, they could not contact their Advocate to contest the suit. Only when the present

Commissioner took charge and on receiving notice in the E.P, he came to know about the exparte decree and immediately steps were taken to set aside the exparte decree. The delay is neither wilful nor wanton. Unless the delay is condoned and exparte order is set aside, the general public will be put to irreparable loss as permanent injunction has been granted restraining the petitioner from forming the road. The respondent filed counter affidavit and opposed the said application and stated that petitioner has not given any reason for the huge delay of 3186 days. The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the application.

3. Against the said order dated 11.10.2012 made in I.A.No.107 of 2012 in O.S.No.80 of 2000, the present Civil Revision Petition is filed by the petitioner.

4. The learned counsel appearing for the petitioner in support of his contentions, relied on the following judgments:

(i) **2015 (1) CTC 811 in the case of Ajay Kumar Guleha Vs. J.Vijayakumar and another.**

(ii) **2013 (5) CTC 547 in the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur, Nafar Academy and others.**

5. The learned counsel appearing for the respondents in support of his contentions, relied on the judgment, **(2012) 5 SCC 157 in the case of Maniben Devraj Shah Vs. Municipal Corporation of Brihan, Mumbai.**

6. Heard the learned counsel appearing for the petitioner and respondents and perused the materials available on record and considered the judgments relied on by the learned counsel appearing for the petitioner and respondents.

7. From the materials on record, it is seen that the plaintiff, K.Natarajan filed the suit for permanent injunction against the petitioner and two others, restraining them from forming the road. According to the petitioner, when he took charge, on verification of the files and on receiving notice in the E.P, he filed application to condone the delay in filing the petition and an application to set aside the decree immediately. The decree is restraining the petitioner from laying the road. In view of the relief sought for in the suit filed by K.Natarajan, the petitioner must be given an opportunity to put forth their case on merits, so that the general public should not suffer and at the same time, the respondents must be compensated.

8. In the result, the order of the learned Judge is set aside on condition that the petitioner pays a sum of Rs.5,000/- to the learned counsel appearing for the respondents within a period of three weeks from the date of receipt of a copy of this order. The petitioner is also directed to file the written statement within four weeks from the date of receipt of a copy of this order. Since the suit is of the year 2000, the learned Additional District Munsif is directed to dispose of the suit as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

9. For reporting compliance, post the Civil Revision Petition after three weeks.

सत्यमेव जयते

10.10.2017

Index : Yes/No
gsa

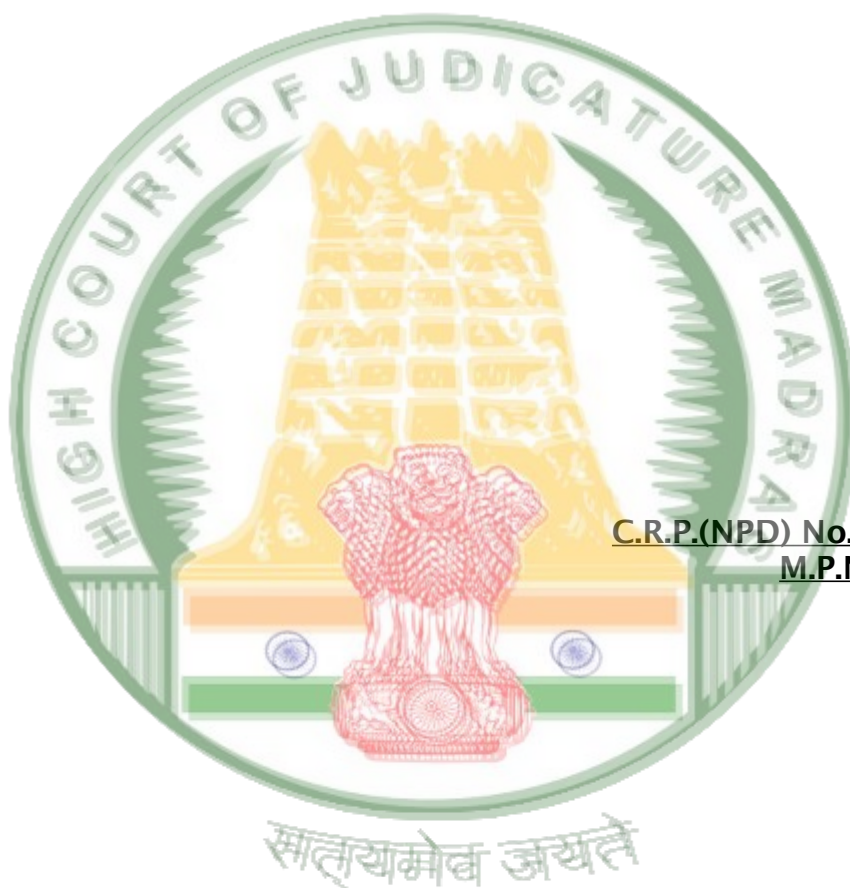
WEB COPY

To

The Additional District Munsif,
Poonamallee.

V.M.VELUMANI, J.

gsa



C.R.P.(NPD) No.661 of 2013
M.P.No.1 of 2013

WEB COPY

10.10.2017