

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4764 of 2012
and M.P.No.1 of 2012

D.Ramanan

.. Petitioner

Vs.

1.Gopalakrishnan
2.Ranganayagi
3.Prema
4.Vasanth

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908, against the fair and decretal order dated 02.11.2012 made in I.A.No.477 of 2011 in I.A.No.205 of 2005 in O.S.No.210 of 1995 on the file of the Principal Subordinate Court, Krishnagiri.

For Petitioner

: Mr.C.Prabakaran

For R1

: Mr.V.J.Arul Raj

For R2 to R4

: Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 02.11.2012 made in I.A.No.477 of 2011 in I.A.No.205 of 2005 in O.S.No.210 of 1995 on the file of the Principal Subordinate Court, Krishnagiri.

2. Heard the learned counsel for the petitioner and perused the materials available on record. The learned counsel appearing for the first respondent submitted that he has given change of vakalat.

3. The petitioner is first defendant and respondents are the plaintiffs in O.S.No.210 of 1995 on the file of the Principal Subordinate Court, Krishnagiri. The respondents filed the said suit for partition against the petitioner and two others. In the said suit, an exparte preliminary decree was passed on four occasions and every time on application filed by the petitioner, the same was set aside. Finally, on 11.02.2004, exparte preliminary decree was passed. The first respondent filed an application in I.A.No.205 of 2005 for passing of final decree. The petitioner entered appearance through advocate and subsequently, he filed I.A.No.260 of 2005 to

condone the delay of 537 days in filling the application to set aside the exparte preliminary decree. The said application was dismissed for default on 06.12.2005. Challenging the same, the petitioner filed C.R.P.No.2955 of 2007 before this Court. A final decree was passed on 24.01.2007. The respondents filed E.P.No.244 of 2007 to execute the decree. The petitioner entered appearance through counsel, but did not file counter. Delivery was ordered and the respondents took possession of the property with the help of police and therefore, the said E.P. was closed on 02.01.2008.

4. According to the petitioner, he filed I.A.No.477 of 2011 for condoning the delay of 52 days in filing the application to set aside the exparte final decree dated 24.01.2007. The petitioner has stated that he came to know about the exparte final decree only in the year 2011 and he filed the said application on 07.07.2011 and obtained copy of the decree on 30.08.2011.

5. The respondents filed counter affidavit and submitted that petitioner was aware of the final decree on 24.01.2007 itself as he appeared through counsel in E.P.No.244 of 2007 filed by the respondents for taking possession of the property.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application.

7. Though the petitioner entered appearance in the E.P., he did not contest the E.P. From these facts, the contention of the petitioner that there is 52 days delay in filing the application to set aside the exparte final decree, is not correct. Similarly, the contention of the petitioner that he came to know about the final decree only in the year 2011 is also not correct. It is seen that the petitioner is in the habit of not contesting the matter and filing the applications to set aside the exparte order. It is clear that the intention of the petitioner is only to drag on the proceedings.

8. For the above reason, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

26.10.2017

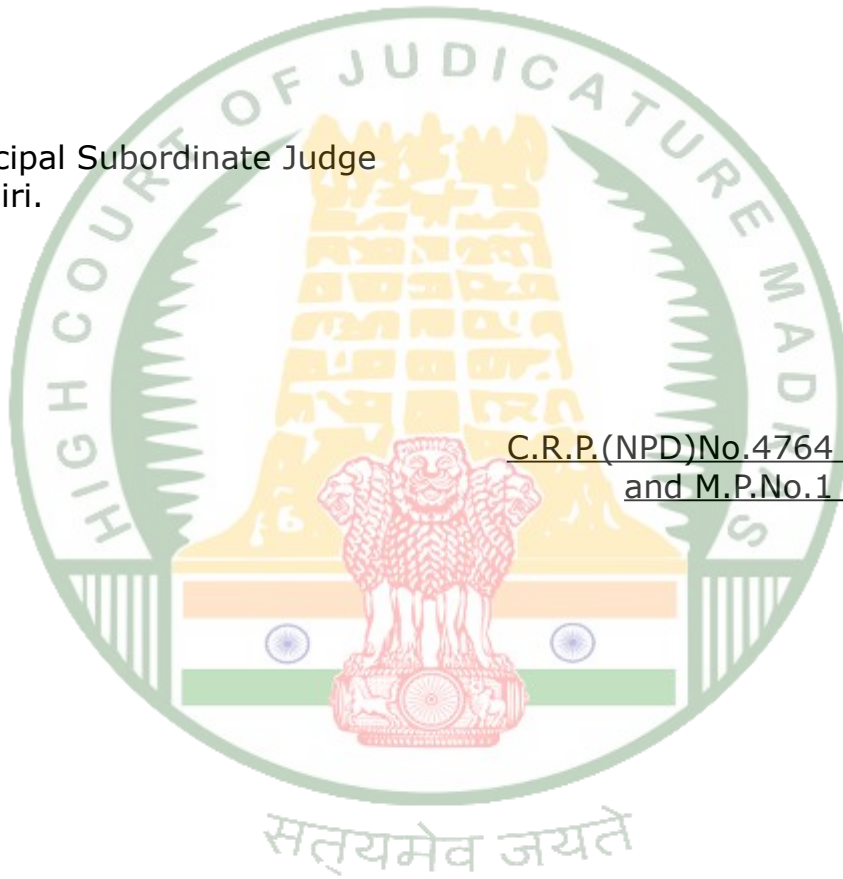
Index : Yes/No
dm/kj

V.M.VELUMANI, J.

dm/kj

To

The Principal Subordinate Judge
Krishnagiri.



C.R.P.(NPD)No.4764 of 2012
and M.P.No.1 of 2012

WEB COPY 26.10.2017