

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4776 of 2012

Jaya Ammal (Deceased)

R.Ezhil Murugan

.. Petitioner

(Cause title accepted vide order of Court dated 14.12.2012 made in M.P.No.1 of 2012 in C.R.P.SR.No.102479 of 2012)

Vs.

1.Krishnaveni

2.Lakshmi

3.Athithan @ Tamil Athithan

4.S.Anbu

.. Respondents

(R4 impleaded as fourth respondent vide order of Court dated 24.10.2017 made in C.M.P.No.10862 of 2017 in C.R.P.No.4776 of 2012)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 04.06.2012 made in I.A.No.234 of 2009 in O.S.No.1056 of 1996 on the file of the Principal District Munsif Court, Chengam.

For Petitioner : Mr.Vignesh
for Mr.P.L.Narayanan

For R1 & R3 : No Appearance

For R2 : Not ready in notice

For R4 : Mr.S.P.Yuaraj

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 04.06.2012 made in I.A.No.234 of 2009 in O.S.No.1056 of 1996 on the file of the Principal District Munsif Court, Chengam.

2. The petitioner is the legal heir of one Jaya Ammal, who is the defendant and respondents 1 to 3 are the plaintiffs in O.S.No. 1056 of 1996 on the file of the Principal District Munsif Court, Chengam. The respondents 1 to 3 have filed the said suit for declaration and injunction restraining the deceased Jaya Ammal from interfering with their possession and enjoyment of the suit property. The said Jaya Ammal entered appearance through Advocate and subsequently, she did not contest the suit and exparte decree was passed on 25.09.2002. The said Jaya Ammal filed I.A.No.234 of 2009 to condone the delay of 2182 days in filing the

petition to set aside the exparte decree.

3. According to the petitioner, originally, the suit was filed in the Court at Thiruvannamalai and she filed written statement. Subsequently, the said suit was transferred to the Principal District Munsif Court at Chengam. The deceased Jaya Ammal was residing in Arokkonam at her daughter's house. She was suffering from cardiac pain and was taking treatment at Jipmer Hospital, Pondicherry. Her son/petitioner herein was in possession and enjoyment of the suit property and was cultivating the same. Her Advocate did not inform the stage of the suit and subsequently, she came to know about the exparte decree only in the month of October 2008, when the respondents gave the complaint before the Superintendent of Police, Tiruvannamalai. The delay is neither wilful nor wanton.

4. The third respondent filed counter affidavit, which was adopted by the respondents 1 and 2. They denied all the averments made by the said Jaya Ammal. According to the respondents 1 to 3, the reasons given by the said Jaya Ammal are not valid reasons and she has not explained for the huge delay of 2182 days in filing the application to set aside the exparte decree.

5. Before the learned Judge, the said Jaya Ammal was examined as P.W.1 and marked one document i.e., medical card issued by the Jipmer hospital, Pondicherry, as Ex.A1. The respondents 1 to 3 examined third respondent as R.W.1 and they did not mark any documents.

6. The learned Judge, considering all the averments made in the affidavit, counter affidavit, oral and documentary evidence, dismissed the application holding that the deceased Jaya Ammal has not given any valid reason for condoning the delay of 2182 days.

7. After the death of Jaya Ammal, the present petitioner has filed C.R.P.(NPD) No.4776 of 2012 against the order of dismissal dated 04.06.2012 made in I.A.No.234 of 2009 and cause title was accepted vide order of this Court dated 14.12.2012 made in M.P.No.1 of 2012 in C.R.P.SR.No.102479 of 2012. Subsequently, the fourth respondent filed C.M.P.No.10862 of 2017 in C.R.P.No.4776 of 2012 to implead himself as a fourth respondent in the present Civil Revision Petition. He was impleaded as fourth respondent by the order dated 24.10.2017 made in C.M.P.No.10862 of 2017. The

learned Judge allowed the said petition on the ground that the fourth respondent has purchased the property and he is in possession of the suit property.

8. The learned counsel appearing for the petitioner contended that the respondents 1 to 3 had obtained ex parte decree by playing fraud on the Court. Originally, the deceased Jaya Ammal left the village and was residing in Arakkonam with her daughter from the year 2002. At that time, she was suffering from various ailments and cardiac pain and was taking treatment continuously in Jipmer Hospital, Pondicherry. The learned Judge has not properly appreciated all these facts and erroneously dismissed the application.

9. The learned counsel for the fourth respondent contended that the said Jaya Ammal has filed the application to condone the delay of 2182 days in filing the petition to set aside the ex parte decree. She has not properly explained the cause for such huge delay. The learned Judge properly appreciated all the facts and rightly dismissed the application. Hence, he prayed for dismissal of the present revision.

10. Though notice was served on the respondents 1 to 3 and their names were printed in the cause list, there is no representation on behalf of the respondents 1 to 3 either in person or through counsel.

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

12. According to the said Jaya Ammal, she left the village in the year 2002 and was residing with her daughter in Arakkonam and subsequently, she was taking treatment in Jipmer hospital as out patient for cardiac pain. Before the learned Judge, the said Jayammal let in oral evidence and marked medical card issued by the Jipmer Hospital, Pondicherry, as Ex.A1.

13. It is seen from the medical card of Jipmer Hospital, Pondicherry, that the said Jaya Ammal was taking treatment only from the year 2006, whereas exparte decree was passed on 25.09.2002. The said Jaya Ammal has not explained as to why she did not file any application to set aside the exparte decree till she

was taking treatment in the year 2006. Even thereafter, she has not filed any application and she has not substantiated her contention that she was taking treatment as out patient for her illness. The learned Judge has considered all the above facts and dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 04.06.2012.

14. In the result, the Civil Revision Petition is dismissed. No costs.

08.11.2017

Index : Yes/No

dm/kj

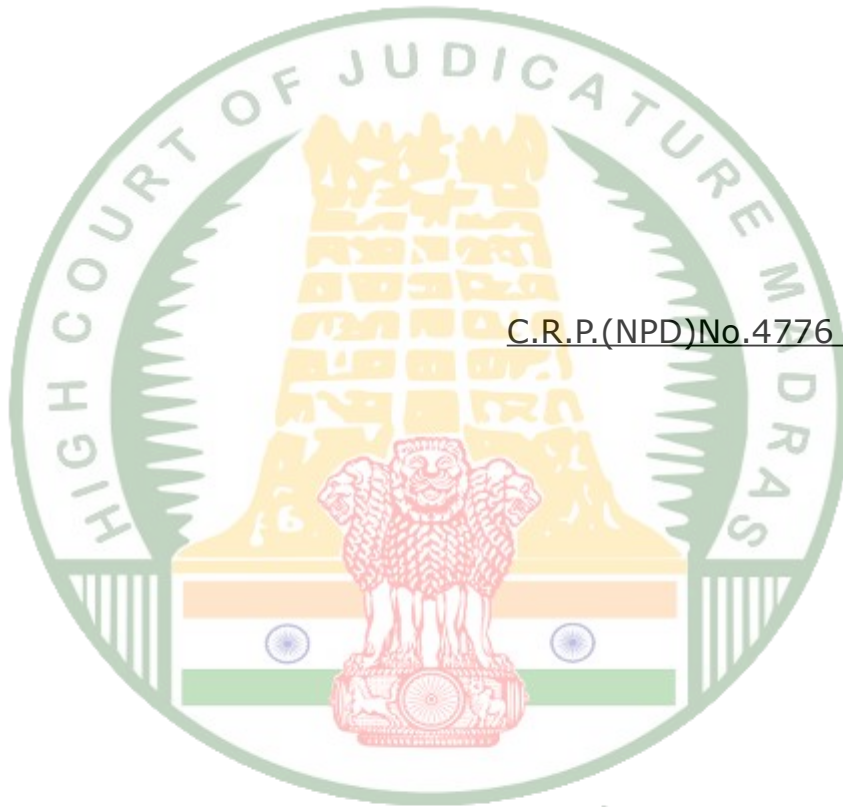
To

The Principal District Munsif
Chengam.

सत्यमेव जयते
WEB COPY

V.M.VELUMANI, J.

dm/kj



C.R.P.(NPD)No.4776 of 2012

सत्यमेव जयते

08.11.2017

WEB COPY