

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.1445 & 1572 of 2003

C.M.P.Nos.11434 & 10207 of 2003

1. V.S.Periya Gounder ...1st Petitioner in Petitioner
C.R.P(PD)No.1445/2003 &
in C.R.P(PD)No.1572/2003
2. Subbathal ... 2nd Petitioner in
C.R.P(PD).No.1445/2003
- Vs.
1. Shanmugam @ Periyasamy ...1st Respondent in CRP(PD).1445/03
and 2nd respondent in CRP.1572/03
2. Krishnamoorthy ...2nd Respondent in CRP.1445/03
3rd Respondent in CRP.1572/03
3. Velusamy Goundar ...3rd Respondent in CRP.1445/03
4. Velusamy,
S/o. Subbana Goundar ...1st Respondent in CRP.1572/2013

PRAYER in both the C.R.Ps: Civil Revision Petitions filed Under Section 115 of Civil Procedure Code, against the fair and decretal orders dated 03.02.2003 passed in I.A.Nos.305 & 306 of 2002 in O.S.Nos.2519 of 1996 & 1173 of 2000, on the file of II Additional District Munsif Court, Coimbatore.

For Petitioners : Mr.N.Elumalai

For Respondents 1to3 : No Appearance

ORDER

These Civil Revision Petitions have been filed against the fair and decretal orders dated 03.02.2003 passed in I.A.Nos.305 & 306 of 2002 in O.S.Nos.2519 of 1996 & 1173 of 2000, on the file of II Additional District Munsif Court, Coimbatore.

2. The issues involved in both the civil revision petitions are one and the same and therefore, disposed of by this common order.

3. The petitioners in C.R.P.(PD).No.1445 of 2003 are the defendants 1 & 2. Respondents are the plaintiffs 1, 2 and defendant 3 in O.S.No.2519 of 1996, on the file of the District Munsif Court, Coimbatore, which was filed for declaration and recovery. The petitioner in C.R.P.No.1572 of 2003, is the plaintiff and respondents are the defendants in O.S.No.1173 of 2000 on the file of the District Munsif Court, Coimbatore, which was filed for permanent injunction.

4. When the above suits were posted for trial, the respondents did not appear before the Court. Therefore the O.S.No.2519 of 1996 was dismissed for default on 20.09.2002 and O.S.No.1173 of 2000 was decreed on 20.09.2002. Immediately, the respondents filed I.A.No.305/2002 to restore the suit in O.S.No.2519/1996 and I.A.No.306/2002 to set aside the exparte decree passed in O.S.No.2274/2000.

5. According to the respondents, the second respondent, Shanmugam in C.R.P.No.1445 of 2003 was conducting the case for himself and on behalf of his brother, the third respondent. The first respondent is an agriculturist. Due to failure of monsoon and lack of money, he could not cultivate the land. He was wandering for getting loan to cultivate the land. In view of the same, he missed the date of hearing and he did not appear before the Court. The petitioners filed counter affidavit and opposed the said applications. The learned Judge, considering the materials on record, allowed both the applications on payment of a cost of Rs.500/- in each petition.

6. Against that orders dated 03.02.2003, made in I.A.Nos.305 & 306/2002, the present two civil revision petitions have been filed by the petitioners.

7. Heard the learned counsel appearing for the petitioners. Though notice was served on the respondents and their names were printed in the cause list, there is no representation on behalf of the respondents, either in person or through Counsel.

8. From the materials on record, it is seen that the respondents did not appear when the suit was taken up for trial and therefore, the O.S.No.2519 of 1996 was dismissed for default on 20.09.2002 and O.S.No.1173 of 2000 was decreed exparte on 20.09.2002. The respondents have filed application to restore the suit and to set aside the exparte decree without any delay.

9. From the affidavit filed in support of the application, it is seen that the respondents have given valid reason for restoration of the suit and to set aside the exparte decree. The learned Judge has considered the reason given by the respondents in proper perspective and allowed the applications by imposing a cost of Rs.500/-. Considering all

the above facts, I hold that there is no irregularity in the order passed by the learned Judge warranting interference by this Court.

10. Accordingly, both the civil revision petitions are dismissed. No costs. Consequently, connected civil miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

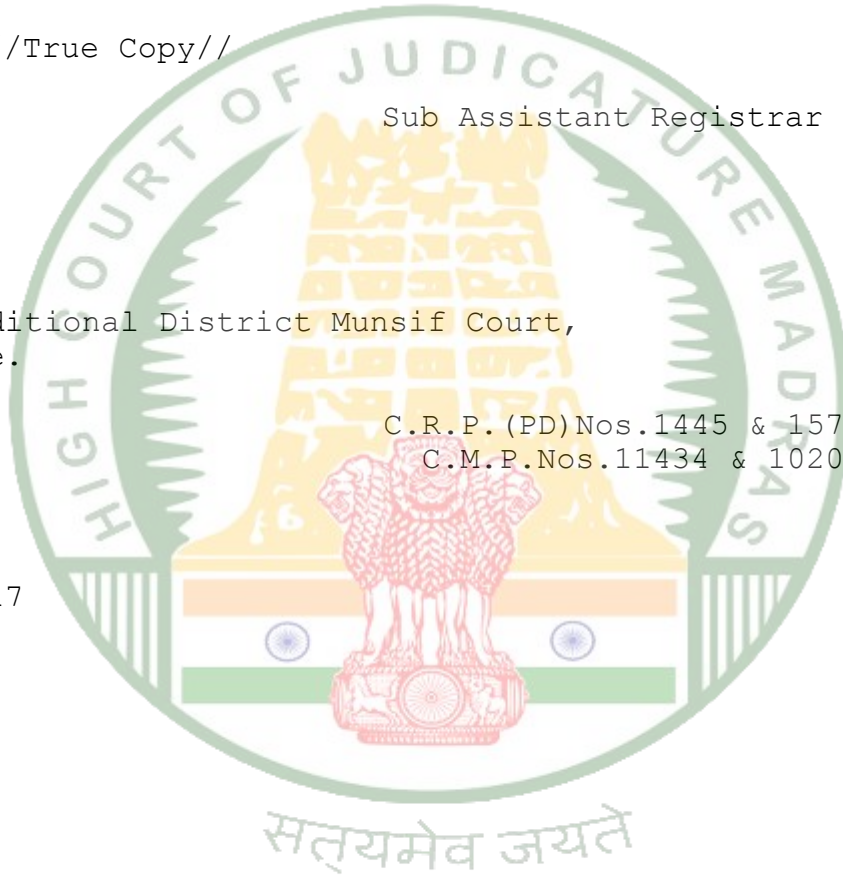
gsa

To

The II Additional District Munsif Court,
Coimbatore.

C.R.P. (PD) Nos. 1445 & 1572 of 2003
C.M.P. Nos. 11434 & 10207 of 2003

SCD(CO)
EU 10/08/17



WEB COPY