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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2017

CORAM:

THE HONOURABLE DR.JUSTICE **G. JAYACHANDRAN**

C.R.P. (NPD) (MD) .No.638 of 2017

and

C.M.P. (MD) .No.2889 of 2017

P.Muthammal (Died)

Nachi Muthammal

... Petitioner/Petitioner

Vs.

Tamilnadu Cherakula Vellala Sangam,

(Regn. No.3/1944)

rep. By its Secretary,

Singanallur, Kurichi,

Coimbatore District.

... Respondent/Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the order passed in E.A.No.463 of 2011 in E.A.No.296 of 2007 in E.P.No.149 of 2007 in O.S.No.32 of 1985 on the file of Subordinate Court, Palani.

For Petitioner : Mr.S.Ramu

For Respondent : Mr.S.Anand Chandrasekar

For M/S Sarvabhauman Associates

O R D E R

The revision petition is directed against the dismissal of the petition filed by the 5th defendant in the suit filed for declaration and possession. The suit which was filed in the year 1985 was decreed on 22.07.1987. Pursuant to the decree, execution petition has been filed in E.P.No.96 of 2001 before the Sub Court, Palani. There was an appeal filed by other defendants and the same was dismissed as withdrawn in the year 1987.

2.Pending execution Petition, this revision petitioner has filed an application under Section 47 of Code of Civil Procedure and also two other applications under Order 21 Rule 106 and section 151 of C.P.C. In so far as the petition filed under Section 47 of C.P.C., the matter has been kept pending for long year for enquiry. From B-Diary extract, it appears that on 27.10.2009 proof affidavit of PW1 was filed and chief examination was recorded and the case was adjourned subsequently to various dates for cross examination of PW1.

3.In the meanwhile, a memo dated 17.02.2010 has been filed <https://hcservices.mca.gov.in/hcservices/> the revision petitioner Muthammal died and her legal representative was sought to be brought on record. However only on 16.03.2011, amendment has been carried out and thereafter, the



Court has again adjourned the matter for further examination of witness.

4. After few adjournments, the petitioner has filed a proof affidavit on 09.08.2011 and the matter has been adjourned for cross examination. For the next four hearings, there was no progress. When the matter was posted on 21.11.2011 for cross examination of PW1, neither PW1 nor his counsel were present. Therefore, the Court recording the state of affairs that "No representation for the petitioner. Petitioner called absent, petition dismissed".

5. The contention of the revision petitioner is that, on 21.11.2011, he went to Chennai to take treatment and therefore he was not able to attend the Court and his counsel who was engaged in some other Court was not able to represent his case.

6. The Trial Court perused the application to set aside the order passed on 21.11.2011. After examining the witness and the documents relied on by the parties, the Court below has arrived at a conclusion that the contention of the petitioner herein that he was at Chennai to take medical treatment, has not been established. Contrarily, as per the documents produced by him, he was at the office of the Agricultural Commissioner, Chepauk on 21.11.2011 to peruse certain records and take copies.

7. The cumulative assessment of the conduct of the revision petitioner shows that Section 47 of C.P.C. application which was filed as early as 2005 had been kept pending for one reason or other and in spite of opportunities were given to the revision petitioner to positively pursue the case, he has not availed this opportunity and on the day, when he was to be cross examined, he was not attending the Court and the said fact has not been brought to the notice of this Court by his Counsel. Therefore, the Trial Court has dismissed the petition to set aside the order passed on 21.11.2011.

8. Heard the learned counsel for the revision petitioner and respondent.

9. On perusal of the records, this Court finds that there is no error or illegality in the order passed by the Trial Court. Hence this Civil Revision petition is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

Sub Assistant Registrar



The Subordinate Court,
Palani

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+1cc to M/S.S.RAMU, Advocate SR.No.53702

+1cc to M/S.SARAVABHAUMAN ASSOCIATES, Advocate SR.No.53517

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JM/SKN RSK/SAR 3/25.04.2017/3P/4C