

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2169 of 2014
& M.P.No.1 of 2014

1.S.Rajeswari
2.S.Prema
3.K.Shanthi
4.S.Sivakumar
5.S.Thirunavakkarasu
6.S.Saravanakumaran
7.R.Karpagavalli

.. Petitioners

Vs.

Sri Sishta Gurunathaswami Devasthanam
Thiruthuraiyur
Rep by its Administrative Officer.

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C to set aside the judgment and decree dated 28.02.2014 made in C.M.A.No.44 of 2011 on the file of the I Additional District Court, Cuddalore, confirming the fair and decretal order dated 12.01.2007 made in I.A.No.401 of 2004 (Panruti Sub Court I.A.No.219 of 2003) in O.S.No.60 of 2001 on the file of the District Munsif Court, Panruti.

For Petitioners : Mr.K.A.Ravindran

For Respondent : Mr.V.Srikanth

ORDER

This Civil Revision Petition is filed to set aside the judgment and decree dated 28.02.2014 made in C.M.A.No.44 of 2011 on the file of the I Additional District Court, Cuddalore, confirming the fair and decretal order dated 12.01.2007 made in I.A.No.401 of 2004 (Panruti Sub Court I.A.No.219 of 2003) in O.S.No.60 of 2001 on the file of the District Munsif Court, Panruti.

2.The petitioners are legal heirs of the deceased first defendant and respondent is the plaintiff in O.S.No.60 of 2001 on the file of the District Munsif Court, Panruti. The respondent filed the said suit against deceased Sambandamurthi and one Rajangam for declaration to declare the title respondent-temple to the suit 'A' schedule property and permanent injunction restraining the deceased first defendant from interfering with the peaceful possession and the enjoyment of the suit 'A' Schedule property. The deceased first defendant filed written statement and was contesting the suit. Subsequently, the said Sambandamurthi did not appear and contest the suit. He was set exparte. The second defendant contested the suit and the suit was decreed on 28.11.2002.

3.The deceased first defendant Sambandamurthi filed I.A.No.219 of 2003 before the Sub Court, Panruti and subsequently, it was transferred to District Munsif Court, Panruti and re-numbered as I.A.No.401 of 2004, to set aside the exparte decree passed against him on 28.11.2002. The learned counsel for the respondent made an endorsement that application may be allowed on terms. After application being adjourned on number of hearings for enquiry, the learned Judge considering the averments in the affidavit, materials on record and hearing the arguments of the learned counsel for the deceased first defendant and respondent, dismissed the application by the order dated 12.01.2007, holding that decree is not an exparte decree and decree was passed on merits.

4.The petitioners who are the legal heirs of the deceased first defendant, Sambandamurthi filed C.M.A.No.44 of 2011 on the file of the I Additional District Court, Cuddalore, challenging the said order. The learned Appellate Authority considering the materials available on record, dismissed the appeal.

5. Against the said dismissal of the judgment and decree dated 28.02.2014 made in C.M.A.No.44 of 2011, confirming the order dated 12.01.2007 made in I.A.No.401 of 2004 (Panruti Sub Court I.A.No.219 of 2003) in O.S.No.60 of 2001, the petitioners have come out with the present Civil Revision petition.

6. The contention of the learned counsel for the petitioners is that deceased first defendant who filed application to set aside the exparte decree died on 18.08.2005 and as the order was passed on 12.01.2007, after the death of the first defendant, the same is nonest in law. The deceased first defendant has given valid reason for setting aside the exparte decree.

6(a). In support of his contentions, the learned counsel for the petitioners relied on the judgment reported in **2012-2-LW 514 (The Managing Director, Tamil Nadu State Transport Corporation Ltd., 12, Ramakrishnapuram Road, Salem 636 007 Vs. M.Parthasarathy & Others)** and contended that when the respondent remained absent and set exparte, Court should not have passed an order on merits and ought to have passed exparte.

7. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record and the judgment relied on by the learned counsel for the petitioners.

8. The contentions of the learned counsel for the petitioners does not support the case of the petitioners. The petitioners have come out with the present contention, first time in the Civil Revision Petition. On the other hand, when the deceased first defendant who filed application to set aside the decree died pending application, the petitioners who are the legal heirs of the deceased first defendant ought to have got themselves impleaded in the application and continued to prosecute the case. They have filed C.M.A.No.44 of 2011 and did not contend that the order passed by the learned Judge is non-est in law. They prosecuted the appeal on merits and did not seek for remand of I.A.No.401 of 2004 (Earlier I.A.No.219 of 2013, on the file of the Subordinate Court, Panruti) for fresh disposal after impleading them as applicants therein. Having failed to do so, the present Civil Revision Petition is not maintainable and is devoid of merits. Further the contention of the learned counsel for the petitioners that the deceased first defendant Sambanthamoorthy has given valid reason for his non-appearance

and the reason given by the learned Trial Judge and the learned Appellate Authority that decree is passed on merits and the same is not an ex parte decree is not correct. The judgment relied on by the learned counsel for the petitioners does not advance the case of the petitioners. In the present case, the petitioners have filed written statement through their Advocate and subsequently, did not contest the case.

9. For the above reasons, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.02.2018

Index : Yes/No

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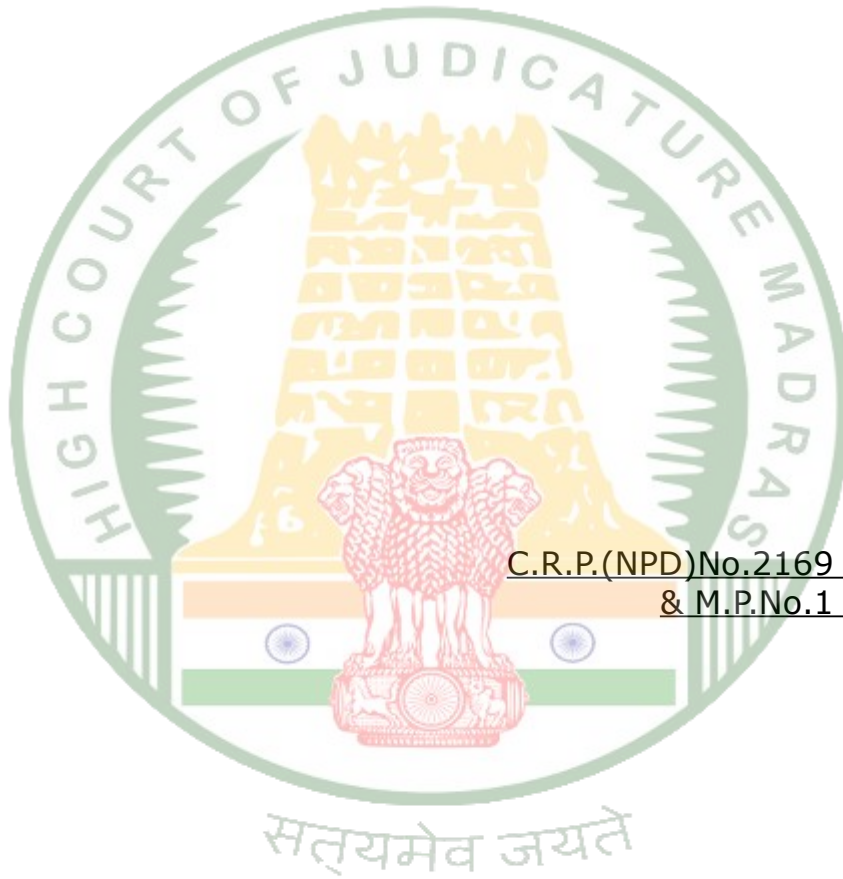
1. The I Additional District Judge,
Cuddalore.

2. The District Munsif,
Panruti.

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V.M.VELUMANI,J.

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