

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2984 of 2014
and M.P.No.1 of 2014

1.Chinnaponnu
2.Ganesan
3.Elumalai
4.Arumugam

.. Petitioners

Vs.

Geetha

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decretal order dated 09.01.2014 made in I.A.No.1022 of 2013 in O.S.No.31 of 2002 on the file of the Principal District Munsif Court, Villupuram.

For Petitioners : Mr.C.Prabakaran

For Respondent : Mr.V.Lakshminarayanan

ORDER

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This Civil Revision Petition is filed against the fair and decretal order dated 09.01.2014 made in I.A.No.1022 of 2013 in O.S.No.31 of 2002 on the file of the Principal District Munsif Court, Villupuram.

2.The petitioners are the defendants and respondent is the plaintiff in O.S.No.31 of 2002 on the file of the Principal District Munsif Court, Villupuram. The respondent filed the said suit for declaration to declare the petitioners' revocation of the registered General Power of Attorney dated 13.07.1992 as null and void and for permanent injunction restraining the petitioners from interfering with her peaceful possession and enjoyment of the suit properties. In the said suit, the petitioners 1, 3 and 4 entered appearance through Advocate and 2nd petitioner did not file vakalat. The petitioners were called absent and set exparte and exparte decree was passed on 05.08.2003. The petitioners filed application on 05.03.2008 under Section 5 of the Limitation Act to condone the delay of 1116 days in filing the application under Order IX Rule 13 of C.P.C to set aside the exparte decree. The said application was returned for certain compliances. The petitioners did not re-present the same in time.

3.The petitioners filed present application I.A.No.1022 of 2012 to condone the delay of 1530 days in re-presenting the application filed to condone the delay in filing the petition to set aside the exparte decree. According to the petitioners, the 3rd petitioner was conducting the case on behalf of all the petitioners and petitioners

went to Chennai for their avocation. The 3rd petitioner was suffering from jaundice and joint pain and therefore, they could not meet their Advocate and re-present the application in time.

4.The respondent filed detailed counter affidavit and opposed the said application and contended that the application was returned only to give notice to the other side. The petitioners knowing fully well that respondent is in possession and enjoyment of the property and exparte decree dated 05.08.2003, did not re-present the application in time.

5.Before the learned Judge, the 3rd petitioner was examined as P.W.1 and one Doctor A.S.Arivazhagan was examined as P.W.2 and marked 3 documents as Exs.P1 to P3. On behalf of the respondent, no oral and documentary evidence was marked.

6.The learned Judge considering the averments in the affidavit, counter affidavit, oral and documentary evidence of the petitioners and judgments relied on by the parties, dismissed the application on the ground that petitioners have not given any details as to when they went to Chennai for work and from when the 3rd petitioner was were not well and also the reasons for not contacting the Advocate.

7. Against the said order of dismissal dated 09.01.2014 made in I.A.No.1022 of 2013 in O.S.No.31 of 2002, the present Civil Revision Petition is filed by the petitioners.

8. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

9. An ex parte decree was passed against the petitioners on 05.08.2003. The petitioners have filed application to set aside the ex parte decree along with the application to condone the delay of 1116 days in filing the said application. The said application was returned to give notice to the other side. The petitioners did not re-present the same in time after rectifying the defects. The petitioners filed present I.A.No.1022 of 2012 on 22.08.2012 to condone the delay of 1530 days in filing the application to re-present the application which was returned for certain compliances.

10. From the materials on record, it is seen that the petitioners' mother was admitted in the hospital from 21.07.2011 to 27.07.2011. The petitioners have not given any particulars for the delay in representing the application. The evidence let in by the petitioners and the medical certificate produced have not supported

the case of the petitioners for the delay in re-presenting the application from the year 2006 to 2012. The learned Judge considering all the above facts, 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 Judge dated 09.01.2014 made in I.A.No.1022 of 2013 in O.S.No.31 of 2002.

11.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index :: Yes/No
gsa

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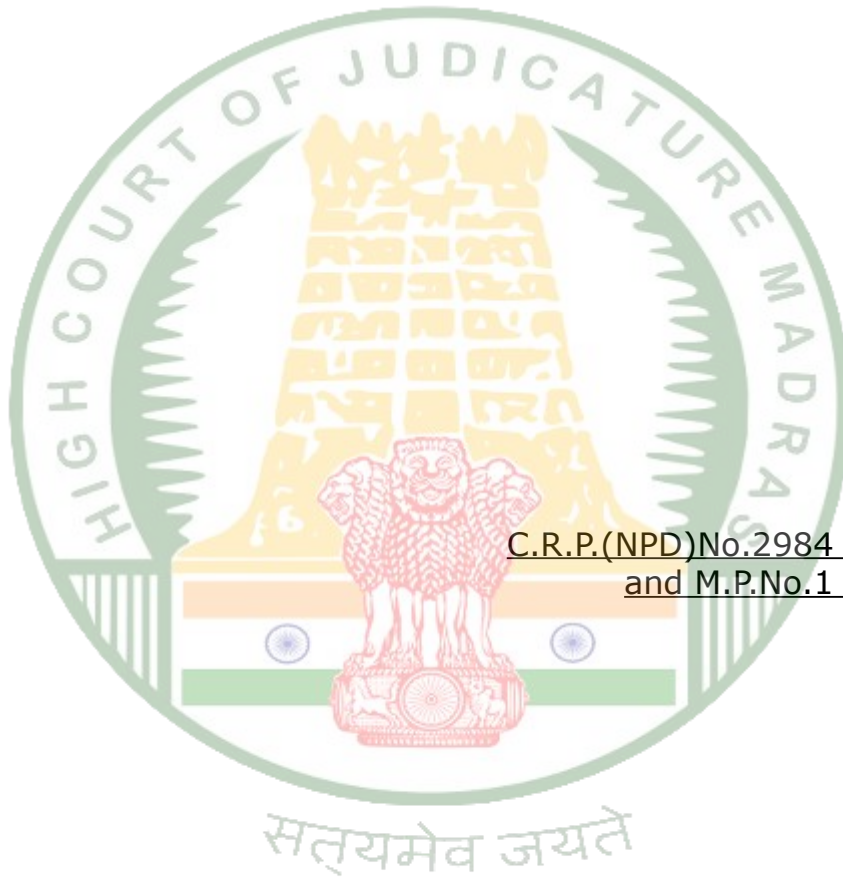
To

The Principal District Munsif,
Villupuram.

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V.M.VELUMANI,J.

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