

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2311 of 2015
& M.P.No.1 of 2015

1.R.Subramaniam
2.R.Ramakrishnan

.. Petitioners

Vs.

Rangammal

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 07.02.2015 made in I.A.No.551 of 2013 in O.S.No.728 of 2005 on the file of the II Additional District Munsif, Coimbatore.

For Petitioners : Mr.C.Veeraraghavan

For Respondent : Mr.K.Goviganesan

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 07.02.2015 made in I.A.No.551 of 2013 in O.S.No.728 of 2005 on the file of the II Additional District Munsif, Coimbatore.

2.The petitioners are plaintiffs and respondent is the defendant in O.S.No.728 of 2005 on the file of the II Additional District Munsif, Coimbatore. The petitioners filed the said suit against the respondent for mandatory injunction directing the respondent to remove the unauthorised and illegal thatched shed put up in the suit property and for permanent injunction restraining the respondent from putting up further construction in the suit property. The respondent filed written statement and subsequently, did not contest the suit. The respondent was set exparte on 08.12.2010 and exparte decree was passed on 16.12.2010. The respondent filed I.A.No.551 of 2013 to condone the delay of 1014 days in filing the application to set aside the exparte decree. According to the respondent, from June 2010, she was suffering from Osteoarthritis and Lumbosacral Spondylitis disease and she could not contact her Advocate and appear before the Court as instructed by her Advocate. The earlier Advocate returned the case bundle to her on 23.07.2010. Due to her illness, she could not appear before the Court and engage new Advocate. She came to know about the exparte decree only when she received a notice in E.P.No.120 of 2013. Therefore, the delay is neither wilful nor wanton.

3.The petitioners filed counter affidavit and denied the allegations that respondent was suffering from illness as stated in the petition. The notice sent in E.P.No.120 of 2013 by RPAD was returned with an endorsement as "Addressee absent and intimation served". The respondent has obtained medical certificate only using her influence. The respondent or the Doctor who gave the certificate has not submitted the summary report of the patient. When the earlier counsel returned the bundle, the respondent ought to have engaged new counsel immediately and ought to have prosecuted the case. The reason given by the respondent is not valid and bonafide.

4.Before the learned Judge, the respondent examined herself as P.W.1 and marked 6 documents as Exs.A1 to A6. No oral and documentary evidence was let in by the petitioners.

5.The learned Judge considering the averments in the affidavit, counter affidavit and the oral and documentary evidence, allowed the application on payment of a cost of Rs.2,000/-.

6. Against the said order dated 07.02.2015 made in I.A.No.551 of 2013 in O.S.No.728 of 2005, the present Civil Revision Petition is filed by the petitioners.

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

8. The contention of the learned counsel for the petitioners is that the respondent has not given any sufficient and valid reason to condone the delay and she has not examined the Doctor who treated her and has not let in any positive evidence to prove her case. All these contentions are untenable. In the affidavit filed in support of the present application, the respondent has not given any reason for the delay. She has examined herself as P.W.1 and she has deposed to the facts mentioned in the affidavit and also filed Exs.A1 to A6 with regard to the illness suffered by her. The respondent has not let in any contra evidence. The learned Judge considering the averments in the affidavit and documents filed and marked by the respondent, allowed the application imposing a cost of Rs.2,000/- by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court with

the order of the learned Judge dated 07.02.2015 made in I.A.No.551 of 2013 in O.S.No.728 of 2005.

9.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. Since the suit is of the year 2005, the learned Judge is directed to dispose of the suit as expeditiously as possible, in any event not later than two months from the date of receipt of a copy of this order.

08.02.2018

Index: Yes/No
Internet: Yes/No
gsa

सत्यमेव जयते

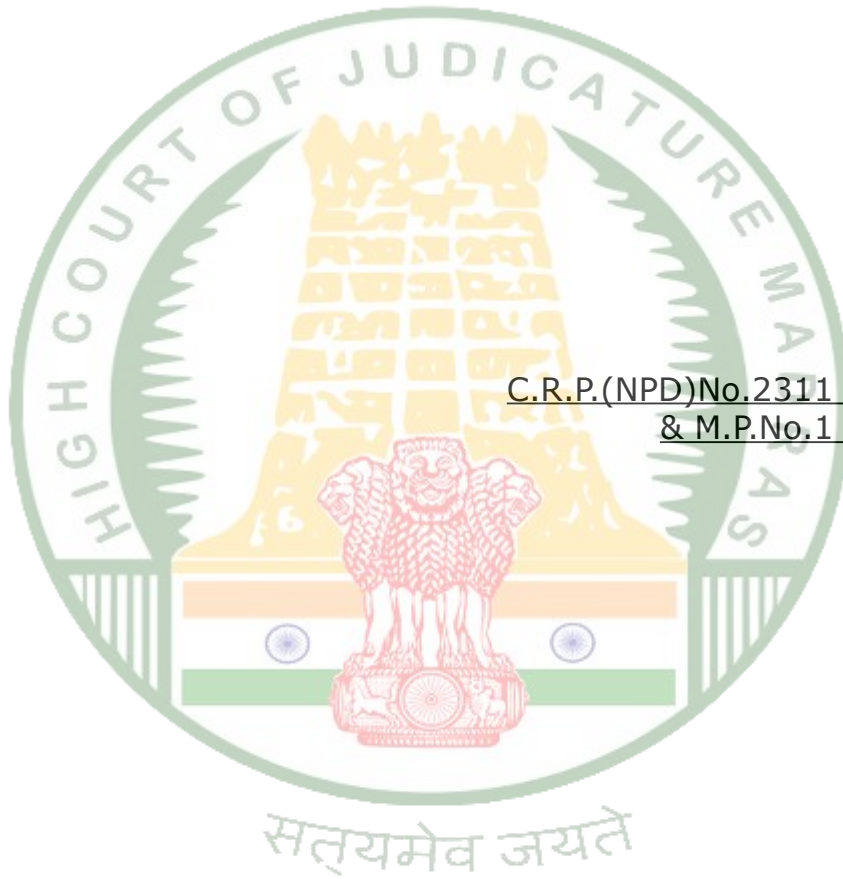
WEB COPY

To

The II Additional District Munsif,
Coimbatore.

V.M.VELUMANI, J.

gsa



C.R.P.(NPD)No.2311 of 2015
& M.P.No.1 of 2015

WEB COPY

08.02.2018