

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.S. RAMESH

C.R.P(P.D)No. 2341 of 2018
and
C.M.P.No.14504 of 2018

N.Nagesh

..Petitioner

-Vs-

1. B.M.Poornachandran

2. M/s.Savitha Estates & Builders (P) Ltd.
Rep. by its Director P.Shanthi

N.Balraj (deceased)

3. P.Venkatesan

L.Nanjiah (deceased)

4. V.Dhanalakshmi

5. V.Raghuram

6. V.Hariram

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to allow the Civil Revision Petition by setting aside the Fair and Final order dated 27.06.2018 passed in I.A.No.288 of 2016 in O.S.No.41 of 2007 on the file of the learned District Judge, Nilgris, Udthagamandalam.

For Petitioner : Mr.S.K.Rakhunathan
For Respondents : Mr.P.Mahadevan for R1 & R2

ORDER

The prayer sought for in the present revision is to set aside the Fair and Final order dated 27.06.2018 passed in I.A.No.288 of 2016 in O.S.No.41 of 2007 on the file of the learned District Judge, Nilgris, Udhagamandalam.

2. Aggrieved against the order passed under Order 22 Rule 9 of Civil Procedure Code seeking to set aside the abatement of the suit, the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioner submitted that the respondent herein has not disclosed sufficient cause to set aside the order of abatement and as such the Court below was not justified in allowing the application to set aside the abatement.

4. On a perusal of the affidavit filed in support of the application to set aside the abatement, it is seen that the respondents herein had stated that the first respondent/first defendant before the Court below, viz., Balraj has expired on 09.02.2005 and they came to know about the legal representatives of the deceased first defendant only in the month of January

2016 and as such, he could not file the application in time. The Court below, by considering such a reasoning given in the affidavit, had taken a view that the abatement should be set aside.

5. The learned counsel for the petitioner had relied upon a judgement in the case of *Union of India Vs. Ram Charan through his Legal Representative* reported in **1964 AIR (SC) 215** and submitted that the reasons adduced by the respondent herein in the application to set aside the abatement do not amount to sufficient cause.

6. On a perusal of the said judgment, it is seen that the dictum laid down therein is that the limitation for filing an application to set aside the abatement commences from the date of death of the defendant and not from the date of his knowledge. In the instant case, the question of commencement of the date of limitation is not the issue. As such, the judgment relied upon by the learned counsel for the petitioner may not be helpful to him.

7. On a perusal of the order passed by the Court below allowing the respondents' application to set aside the abatement, I do not find any infirmity in the said order. As such, it could only be concluded that the reasons assigned in the application could be sufficient cause and that the consequent

order to set aside the abatement of the suit has been validly made.

8. In the light of the above observations, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

23.10.2018

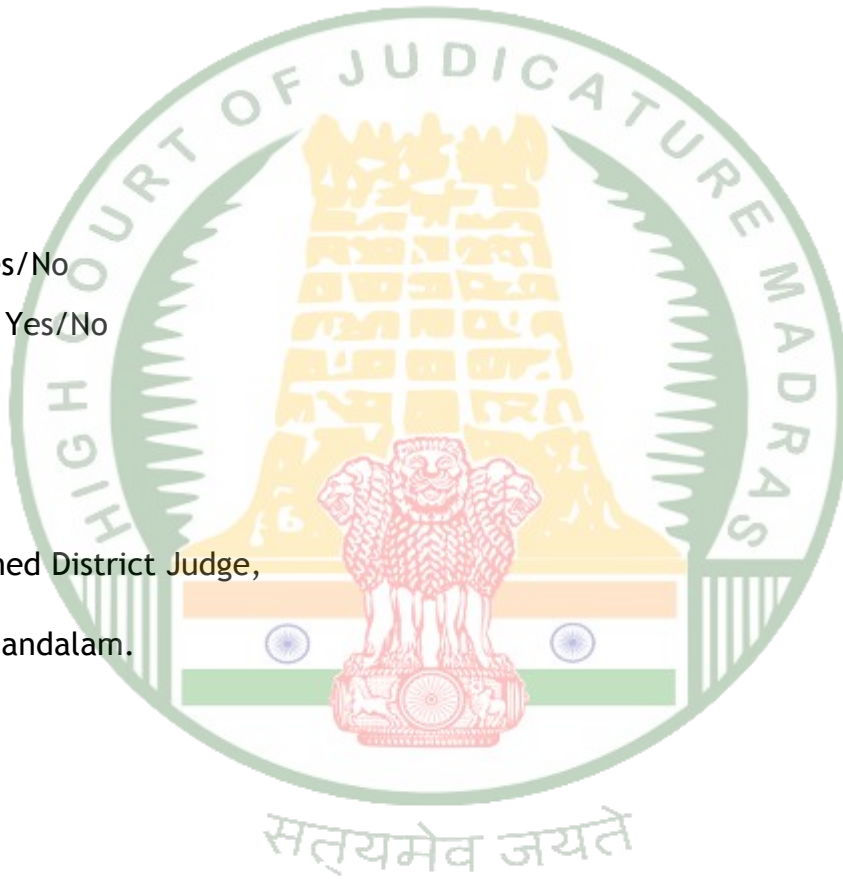
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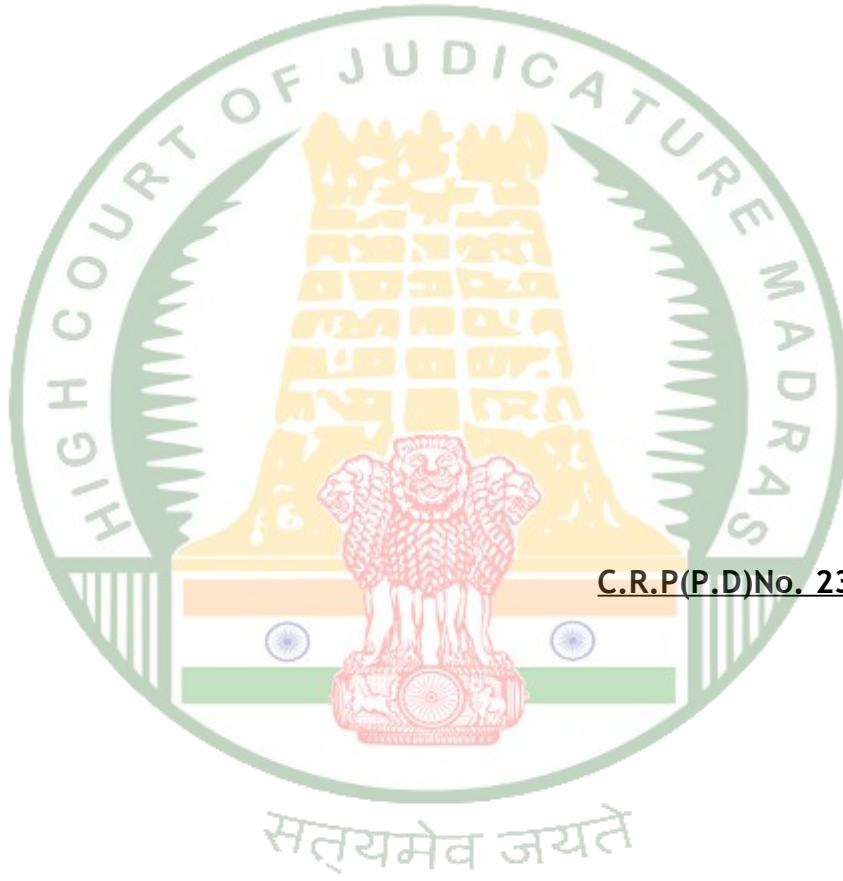
The learned District Judge,
Nilgris,
Udhagamandalam.



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M.S.RAMESH,J.

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