

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(NPD).Nos.486 and 1789 of 2011
and

M.P.Nos.1 +1 of 2011

C.R.P.(NPD).No.486 of 2011

Muthuvel (Died)

1. Asodhai
2. Vennila
3. Savithiri
4. Vijaya
5. Kannan
6. Salaja

... Petitioners

Vs

Velayutham
Chellammal (Died)

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the order and decretal order, dated 08.09.2010 made in I.A.No.785 of 2009 in O.S.No.384 of 1996 on the file of the District Munsif cum Judicial Magistrate, Tittagudi.

C.R.P.(NPD).No.1789 of 2011

1. Muthuvel (Died)
2. Asodhai
3. Kannan

... Petitioners

Vs

1. Velayutham
2. Chellammal (Died)
3. Kaliasammal
4. Subramanian
5. Dhanapakkiam
6. Murugan

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code against the order and decretal order, dated 14.06.2010 made in I.A.No.197 of 2009 in un-numbered C.M.A.No.____ of 2009 on the file of the Sub-Judge, Vridhachallam.

For Petitioners
in both C.R.Ps. : Mr.J.Perumalsamy

For Respondent
in both C.R.Ps. : Mr.V.Raghavachari

COMMON ORDER

The legal representatives of the deceased 3rd defendant in O.S.No.384 of 1996 on the file of the District Munsif cum Judicial Magistrate, Tittagudi, have preferred these twin revision petitions.

2. The brief statement of facts necessary for the current purpose may be stated as follows:

- The plaintiff/the respondent herein, had laid a suit for permanent injunction with an alternate relief of declaration of title and for delivery of vacant possession etc., against five defendants, of whom the first petitioner Muthuvel herein is one. The suit was decreed exparte on

19.11.1998. In the mean time, the plaintiff had filed execution petition for delivery of the property. On Muthuvel's demise his legal representatives are brought on record, and they came forward with two applications, one in I.A.No.197 of 2009 for setting aside the exparte decree and another in I.A.No.785 of 2009 for condoning the delay of 3,829 days. The trial court dismissed both the interlocutory applications.

- Challenging the order rejecting the application for condoning the delay, the revision petitioners have come forward with C.R.P.(NPD)No.486 of 2011.

3. Be that as it may, the petitioners have also preferred a Civil Miscellaneous Appeal before the First Appellate Court, challenging the dismissal of the petitioners' application for setting aside the exparte decree. This was also filed with a delay of 2,707 days. Necessary interlocutory application was filed before the First Appellate Court for condoning the delay, which the First Appellate Court has promptly rejected. This is under challenge in C.R.P.(NPD).No.1789 of 2011.

4. In his affidavit filed in support of the application in I.A.No.785 of 2009 for condoning the delay of 3,829 days, all that the petitioners averred in the affidavit filed is that, the revision petitioners have come to know about the

passing of the exparte decree only when delivery was attempted in execution of the decree. In the counter filed to the said application, the plaintiff/respondent would aver that on the demise of 3rd defendant, his wife and son who are the revision petitioners herein were impleaded as 6th and 7th respondents in E.P.No.1 of 2001 that the respondent had filed. This was closed following a petition filed by the 5th defendant in the suit for setting aside the exparte decree, and on dismissal of the same, the plaintiff/respondent had filed E.P.No.17 of 2003, for delivery and when the court bailiff had gone to the property for effecting delivery, the revision petitioners obstructed the same following which the respondent had filed E.A.No.281 of 2004 for removing the said obstruction under Order 21 Rule 97 C.P.C., and that the same was allowed. Therefore, it is wrong to contend that the petitioners came to know about the passing of the exparte decree only when the officials of the Court had come to the property for effecting delivery.

5. There is approximately a delay of 10 ½ years, and the trial court finds that this delay is not adequately explained.

6. Heard Mr.J.Perumalsamy, learned counsel for the petitioners and Mr.V.Raghavachari, learned counsel for the respondent.

7. On going through the affidavit, this Court finds that the affidavit filed in

support of the application for condoning the delay is bereft of any material particulars and it has not even specified the precise date on which the revision petitioners have come to know of passing of the decree. It does not even appear from the order of the trial court that the allegation of the respondent/plaintiff about the obstruction by the petitioners etc., were not explained. Even before this Court, the delay was not explained with tangible reasons.

8. Turning to the other C.R.P.(NPD)No.1789 of 2011, here again the affidavit is bereft of any details and the consequence can not be different from the one that the earlier case has met with.

9. This Court finds no merit in both the revision petitions and are hereby dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index:Yes/No
ssn

19.04.2018

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N.SESHASAYEE, J.,

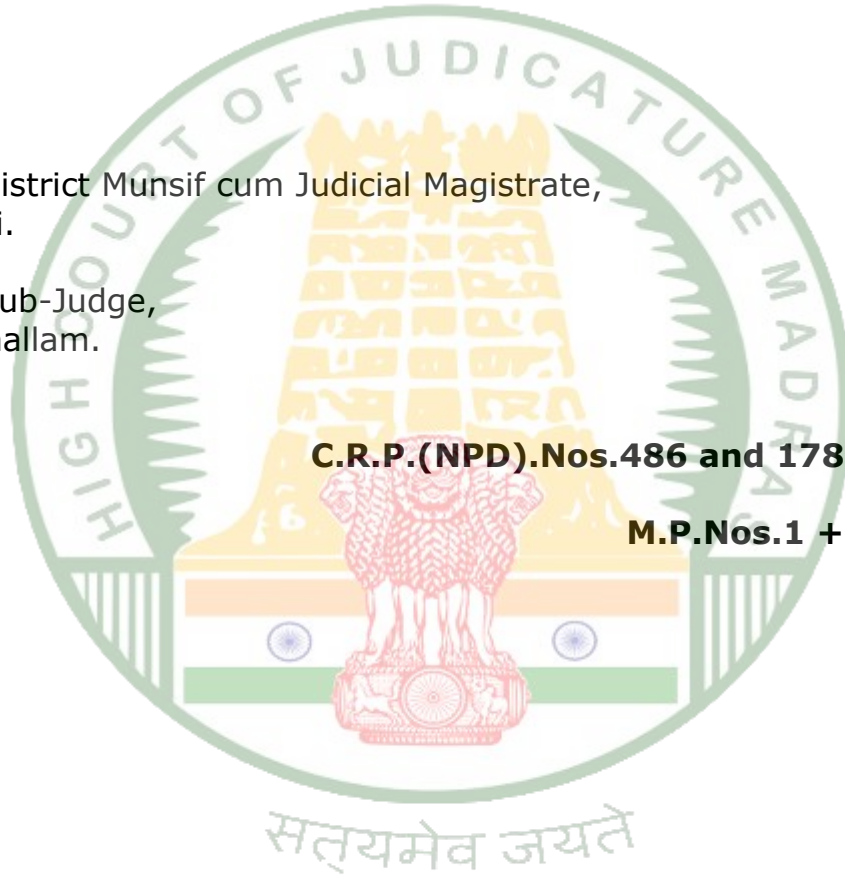
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To

1. The District Munsif cum Judicial Magistrate,
Tittagudi.

2. The Sub-Judge,
Vridhachallam.

**C.R.P.(NPD).Nos.486 and 1789 of 2011
and
M.P.Nos.1 +1 of 2011**



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