

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3772 of 2015
and M.P.No.1 of 2015

- 1.P.Manickavel (died)
- 2.P.Logeswari
- 3.S.Ambujam
- 4.J.Manoharan
- 5.M.Sumathi
- 6.M.Kavitha
- 7.M.Hariharan
- 8.M.Sangeetha

.. Petitioners

(Petitioners 5 to 8 brought on record as Lrs of the deceased first petitioner vide Court order dated 05.03.2018 made in C.M.P.No.14257/2017 in C.R.P.No.3772/2015)

Vs.

- 1.J.Nithyanandam
- 2.The Sub Registrar
Mylapore
Chennai 600 004.
- 3.The Sub Registrar
Triplicane
Chennai 600 005.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 11.08.2015 made in I.A.No.100 of 2015 in O.S.No.308 of 2013 on the file of the XVI Additional City Civil Court, Chennai.

For Petitioners : Mr.G.Anandakumar

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 11.08.2015 made in I.A.No.100 of 2015 in O.S.No.308 of 2013 on the file of the XVI Additional City Civil Court, Chennai.

2.The petitioners 1 to 4 are defendants 1 to 4, petitioners 5 to 8 are the legal heirs of the deceased first petitioner, first respondent is the plaintiff and respondents 2 and 3 are the defendants 5 and 6 in O.S.No.308 of 2013 on the file of the XVI Additional City Civil Court, Chennai. The first respondent filed the said suit for partition, separate possession, mesne profits, declaration to declare the Release Deeds bearing Doc.Nos.1546, 1506, 685, 1481 and 745 of 2004 dated 26.05.2004, 24.05.2004, 26.05.2004, 21.05.2004 and 24.05.2004 respectively as null and void and for permanent injunction restraining the petitioners 1 to 4 and respondents 2 and 3 from alienating or transferring the suit properties.

3.The deceased first petitioner filed written statement in the month of June 2013 and petitioners 2 to 4 adopted the same and

are contesting the suit. Trial commenced. P.W.1 was examined in chief and the suit was posted to 23.07.2015 for cross examination by the counsel for petitioners 1 to 4. There was no representation on behalf of the petitioners 1 to 4 on that day. The suit was adjourned to 28.07.2015 for cross examination of P.W.1 by the counsel for the petitioners 1 to 4. On that day also there was no representation on behalf of the petitioners 1 to 4. The learned Judge set them exparte. The petitioners 1 to 4 filed I.A.No.100 of 2015 on 05.08.2015 to set aside the exparte order. According to the petitioners 1 to 4, their Senior Counsel's sister was seriously ill at Thiruvarur and he left to Thiruvarur. The junior counsel was attending the Cases in High Court and he could not represent when the case was called on 28.07.2015. The failure to attend the Court on 28.07.2015 is neither wilful nor wanton.

4.The learned counsel for the respondents made endorsement in the application that respondents have no objection for allowing the petition.

5.The learned Judge considering the fact that P.W.1 was present in Court for being cross examined, allowed the application on payment of cost of Rs.1000/- payable on or before 17.08.2015

directly to P.W1, failing which the petition shall stand dismissed.

6. Against the said order dated 11.08.2015 made in I.A.No.100 of 2015 in O.S.No.308 of 2013, the petitioners have come out with the present Civil Revision Petition.

7. The learned counsel for the petitioners submitted that the conditional order was not noticed by the counsel and on verification, the petitioners found that the application was dismissed for non-payment of cost. As per the order of this Court the petitioners paid a sum of Rs.2000/- to the Registry and produced proof of service to that effect.

8. From the materials available on record, it is seen that the petitioners' counsel did not appear when the suit was posted for cross examination of P.W.1. According to the petitioners, his Senior Counsel's sister was seriously ill at Thiruvavarur and hence the Senior Counsel left to Thiruvavarur and subsequently, his sister died. In view of the said reason only, there was no representation on behalf of the petitioners. The counsel for the respondents made an endorsement that they have no objection for application being allowed. The learned Judge without considering the reasons given by the

petitioners and no objection endorsement made by the counsel for the respondents, allowed the application by imposing a cost of Rs.1000/-. The only reason given by the learned Judge for awarding cost is P.W.1 was present in the Court for being cross examined. The petitioners have given valid reason for their absence and learned Judge failed to consider the same. Subsequently as per the order passed by this Court, the petitioners have paid a sum of Rs.2000/- to the Registry. In view of the above facts, the order of the learned Judge dated 11.08.2015 made in I.A.No.100 of 2015 in O.S.No.308 of 2013 is liable to be set aside and is hereby set aside.

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

12.03.2018

Index :: Yes/No
gsa

To

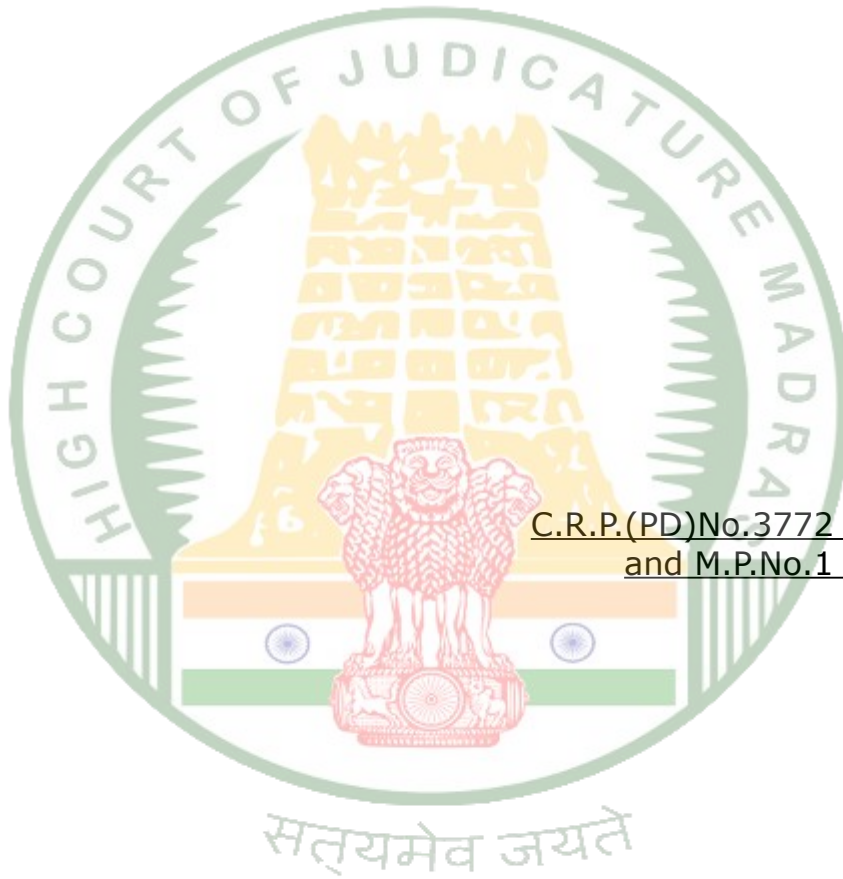
1.The XVI Additional City Civil Judge,
Chennai.

2.The Sub Registrar
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V.M.VELUMANI,J.

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