

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.979 of 2014
and M.P.No.1 of 2014

1.Dhanam
2.Amaravathy

.. Petitioners

Vs.

S.P.Manickam

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 03.12.2013 made in I.A.No.876 of 2013 in I.A.No.85 of 2013 in O.S.No.380 of 2004 on the file of the Additional District Munsif Court, Namakkal.

For Petitioners : M/s.J.Star
for Mr.N.Manokaran

For Respondent : Mr.Venkatesh Mohanraj

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 03.12.2013 made in I.A.No.876 of 2013 in I.A.No.85 of 2013 in O.S.No.380 of 2004 on the file of the Additional District Munsif Court, Namakkal.

2.The petitioners are plaintiffs and respondent is the first defendant in O.S.No.380 of 2004 on the file of the Additional District Munsif Court, Namakkal. The petitioners filed the said suit for partition against the respondents and two others. In the said suit, a preliminary decree was passed by the judgment and decree dated 29.06.2006. The petitioners filed I.A.No.85 of 2013 under Order XXVI Rule 13 and 14 of C.P.C for passing of final decree. The said application was ordered on 26.04.2013. The respondent has filed I.A.No.876 of 2013 under Order IX Rule 7 of C.P.C to set aside the exparte decree passed in I.A.No.85 of 2013. According to the respondent, he was suffering from illness and he could not contact his Advocate to instruct him to appear on the date of hearing on 26.04.2013. After he recovered from illness, he contacted his Advocate and came to know about the exparte order in the final decree application and filed the present application to set aside the exparte decree.

3.The first petitioner filed counter affidavit, which was adopted by the second petitioner and contended that the respondent has not given any particulars about the disease he suffered. After preliminary decree, the respondent filed A.S.No.165 of 2006 against

the preliminary decree. The said appeal was dismissed on 06.04.2010. The respondent has not filed any further appeal. In the final decree application, notice was sent to the respondent. He manipulated without receiving the same. As per the order of the Court, notice was served by substituted service. The intention of the respondent is only to drag on the proceedings and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit and materials available on record, allowed the application in order to give an opportunity to the respondent to put forth his case on merits. The learned Judge compensated the petitioners by awarding a sum of Rs.1000/- as cost payable by the respondent.

5.Against the said order dated 03.12.2013 made in I.A.No.876 of 2013 in I.A.No.85 of 2013 in O.S.No.380 of 2004, the petitioners have come out with the present Civil Revision Petition.

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

7.The respondent did not appear in I.A.No.85 of 2013 filed for passing of final decree and he was set exparte and order was passed on 26.04.2013. Immediately, the respondent filed application to set aside the exparte order. The respondent has stated that due to his illness, he could not appear and contact his Advocate and contest the final decree application. The petitioners filed counter affidavit and denied the said averments. The learned Judge even though held that reason given by the respondent is not valid reason, allowed the application in order to give an opportunity to the respondent to put forth his case on merits. In the final decree application, only question is allotment of the particular portion of the suit property to the petitioners as well as to the respondent and other defendants. In the said proceedings, the respondent and other defendants must be given an opportunity to suggest which portion of the property may be allotted to them in the final decree proceedings. A party should not be shut down at the threshold itself. They must be given an opportunity to contest the matter.

8.In the present application, the respondent must be given an opportunity to participate in the final decree proceedings and for the same, the petitioners will not be prejudiced. The learned Judge only with a view to give an opportunity to the petitioners to put forth

their case on merits, allowed the application. The learned Judge also compensated the petitioners by awarding a sum of Rs.1000/- as cost. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 03.12.2013 made in I.A.No.876 of 2013 in I.A.No.85 of 2013 in O.S.No.380 of 2004.

9.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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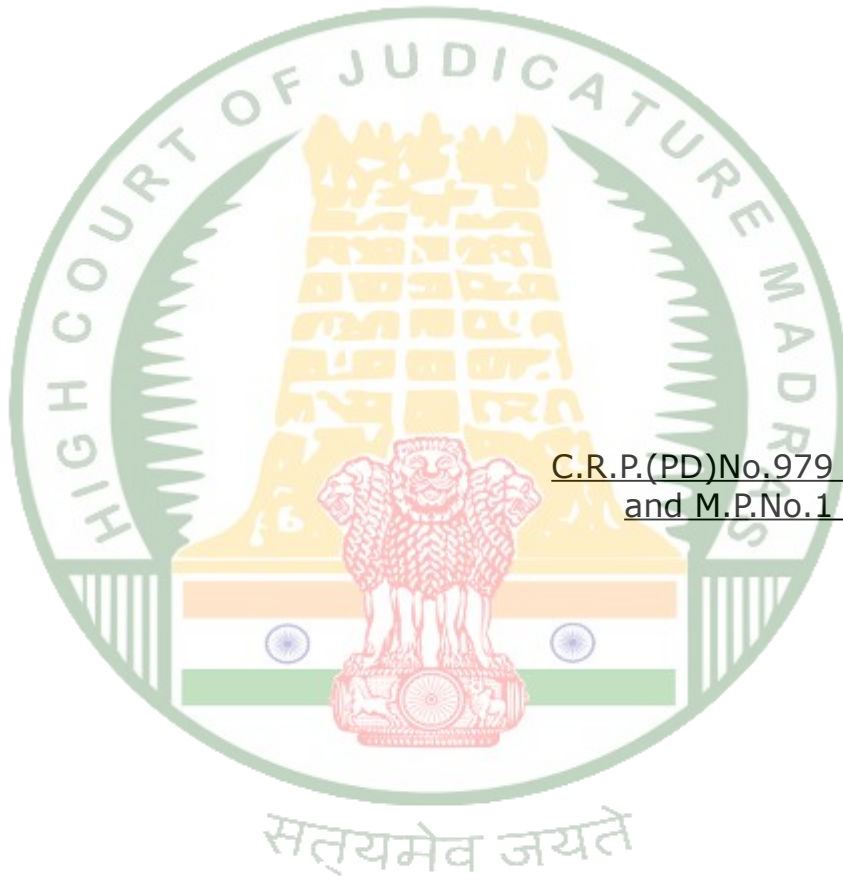
To

The Additional District Munsif,
Namakkal.

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V.M.VELUMANI,J.

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