

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.564 of 2015

1.Parvathy Ammal
2.Lakshmipathy

.. Petitioners

Vs.

1.G.Lakshmanan
2.G.Vasudevan
3.G.Somasundaram

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C against the fair and decretal order dated 28.10.2013 made in I.A.No.1185 of 2013 in O.S.No.32 of 2010 on the file of the District Munsif, Chengalpet.

For Petitioners : M/s.E.Chitra
for M/s.G.A.Thiyagarajan

For Respondents : Mr.V.Nicholas

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ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 28.10.2013 made in I.A.No.1185 of 2013 in O.S.No.32 of 2010 on the file of the District Munsif, Chengalpet.

2.The petitioners are defendants 1 and 2 and respondents are the plaintiffs in O.S.No.32 of 2010 on the file of the District Munsif, Chengalpet. The respondents filed the said suit against the petitioners and three others for declaration of title in respect of "A" Schedule property, permanent injunction restraining the petitioners from interfering with their peaceful possession and enjoyment of the suit "A" schedule property, declaration of their right of passage and for mandatory injunction directing the petitioners to remove the building in the suit "B" Schedule passage. The petitioners entered appearance. Subsequently they did not contest the suit. The suit was decreed exparte on 09.06.2011. The petitioner filed the present I.A.No.1185 of 2013 to condone the delay of 660 days in filing the petition to set aside the exparte decree. According to the petitioners, the first petitioner was suffering from asthma and second petitioner who is her son was looking after her. The first petitioner was taking native treatment. In view of the ailment of the first petitioner, the petitioners could not contact their Advocate and conduct the case.

3.The respondents filed counter affidavit and denied the fact that the first petitioner was suffering from asthma. According to the respondents, the first petitioner was hale and healthy. Even if she

suffered from asthma, that will not prevent her normal work and the second petitioner could have contacted the Advocate and contested the case and prayed for dismissal of the application.

4.The learned Judge, considering the averments in the affidavit and counter affidavit, dismissed the application.

5.Against the said order of dismissal dated 28.10.2013 made in I.A.No.1185 of 2013 in O.S.No.32 of 2010, the present Civil Revision Petition is filed by the petitioners.

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

7.The respondents have filed the suit for declaration of title, for permanent injunction and mandatory injunction directing the petitioners to demolish the building in the suit "B" Schedule passage put up by them. From the materials on record, it is seen that the petitioners were contesting the suit. But according to them, due to the ailment of the first petitioner, they could not contact their Advocate and participate in the proceedings. In view of the relief sought for by the respondents, especially the mandatory injunction,

it will be in the interest of justice to give an opportunity to the petitioners to contest the suit on merits. At the same time, the respondents have to be compensated for the delay of 660 days in filing the application to set aside the exparte decree.

8. For the above reason, the impugned order of the learned Judge dated 28.10.2014, made in I.A.No.1185 of 2013 in O.S.No.32 of 2010 is set aside on condition that the petitioners pay a sum of Rs.2,000/- to the respondents within a period of four (4) weeks from the date of receipt of a copy of this order, failing which, the order of the learned Judge shall stand confirmed. On such payment, the learned Judge is directed to take the suit on file and proceed with the same in accordance with law as expeditiously as possible and in any event not later than three months thereafter.

9. In the result, this Civil Revision Petition is allowed. No costs.

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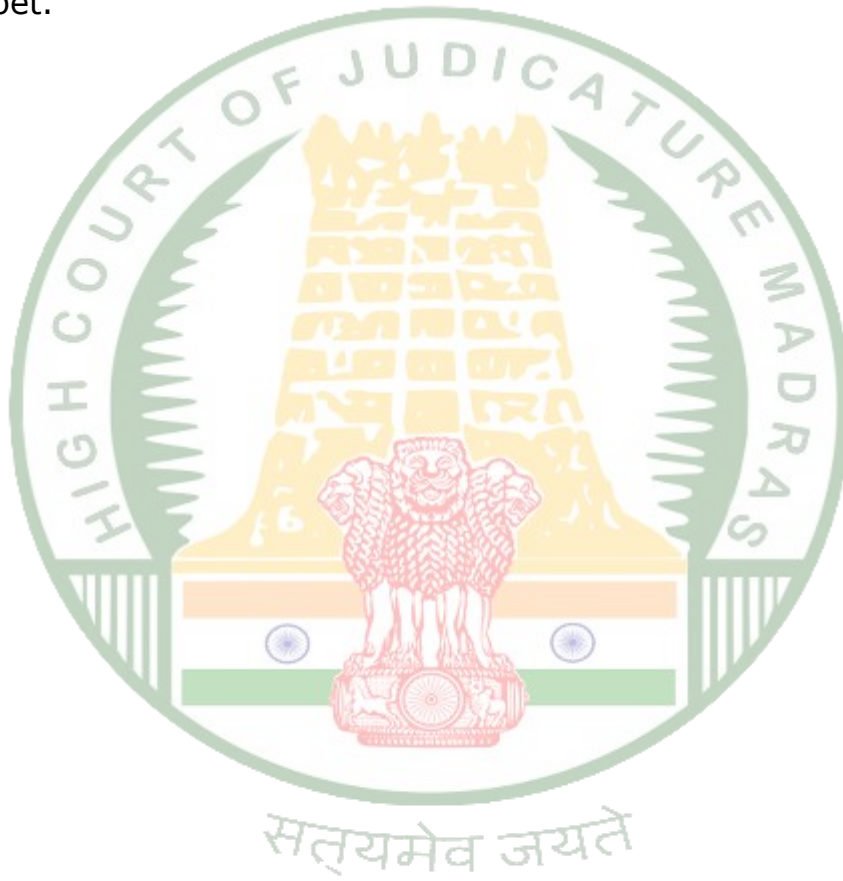
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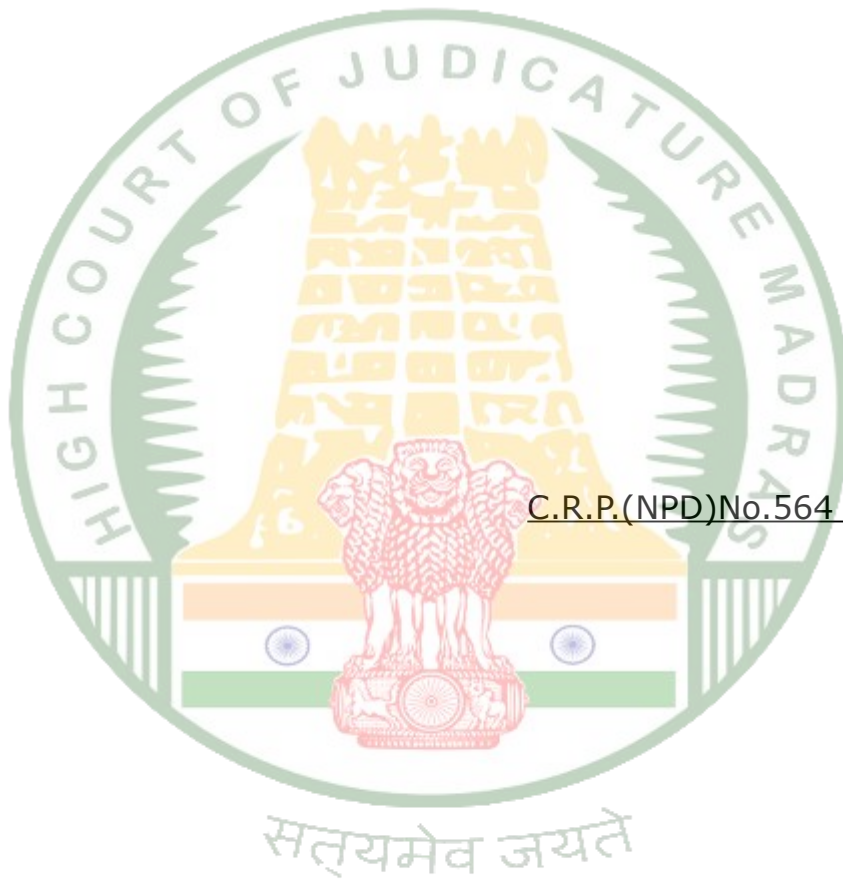
The District Munsif,
Chengalpet.



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V.M.VELUMANI, J.

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