

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.618 of 2015
& M.P.No.1 of 2015

1.Tamizharasan
2.Sagadevan

.. Petitioners

Vs.

Kala

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the fair and decretal order dated 11.09.2014 passed in I.A.No.840 of 2012 in O.S.No.150 of 2009 on the file of the District Munsif of Polur, Tiruvannamalai District.

For Petitioners : Mr.V.Achuthanandan
for M/s.Pass Associates

For Respondent : M/s.D.Malarvizhi

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 11.09.2014 passed in I.A.No.840 of 2012 in O.S.No.150 of 2009 on the file of the District Munsif of Polur, Tiruvannamalai

District.

2.The petitioners are defendants and respondent is plaintiff in O.S.No.150 of 2009 on the file of the District Munsif of Polur, Tiruvannamalai District. The respondent filed the said suit against the petitioners for declaration and consequential permanent injunction. The petitioners filed written statement on 29.06.2009. Subsequently, they did not contest the suit. An exparte decree was passed on 10.12.2011. The petitioners filed I.A.No.840 of 2012 to condone the delay of 180 days in filing the petition to set aside the exparte decree. According to the petitioners, the second petitioner was suffering from jaundice and first petitioner was looking after him. In the circumstances, they could not contact the Advocate and conduct the case.

3.The respondent filed counter affidavit and submitted that in the application I.A.No.237 of 2009 filed by her, interim injunction was granted. The petitioners filed I.A.No.295 of 2009 to vacate the interim injunction. The said I.A filed by the petitioners was dismissed. The injunction granted in I.A.No.237 of 2009 was made absolute. The respondent filed I.A.No.445 of 2010 to implement the

order of interim injunction. The said I.A was allowed. Inspite of the said order, the petitioners trespassed into the suit property. The respondent filed I.A.152 of 2011 to punish the petitioners for disobeying the order of the Court. The respondent filed application for amendment of the plaint to include the relief of possession. The petitioners did not object the said application after receiving notice in the said application. The said application was ordered and amendment was carried out. After amendment, the suit was decreed exparte as the petitioners did not contest the suit.

4.The respondent filed O.E.P.No.11 of 2012 to execute the decree. The notice was served on the petitioners. They did not contest the E.P. The E.P was allowed and possession was taken over by the Court amin in the presence of Village Administrative Officer, village people and petitioners and handed over to the respondent through Court on 30.06.2012. The petitioners having suppressed all the above facts filed the present application without giving any valid reason for condonation of delay and prayed for dismissal of the application.

5.Before the learned Judge, the petitioners were examined as

P.W.s 1 and 2 and no document was marked on their behalf. The respondent examined herself as RW1 and marked certified copy of the Possession Receipt as Ex.R1.

6.The learned Judge, considering the averments in the affidavit, counter affidavit, evidence and Ex.R1, dismissed the application.

7.Against the said order of dismissal dated 11.09.2014 made in I.A.No.840 of 2012 in O.S.No.150 of 2009, the present Civil Revision Petition is filed by the petitioners.

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

9.From the materials available on record, it is seen that the petitioners did not appear during trial and contest the matter. Hence, an exparte decree was passed. The respondent filed E.P.No.11 of 2012 to execute the decree. Even in the E.P, the petitioners did not appear and contest, though notice was served on them. The learned Judge ordered delivery and possession was

delivered to the respondent through Court on 13.06.2012 in the presence of Village Administrative Officer, village people and petitioners. The petitioners suppressed the E.P proceedings and delivery of possession and have come out with the present application on the ground that second petitioner was suffering from Jaundice and they could not appear and contest the suit. The petitioners have not substantiated the said contention before the learned Judge. The learned Judge considering all the above facts as well as Ex.R1, certified copy of Possession Receipt issued to the respondent, dismissed the application. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 11.09.2014 made in I.A.No.840 of 2012 in O.S.No.150 of 2009.

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

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Index: Yes/No

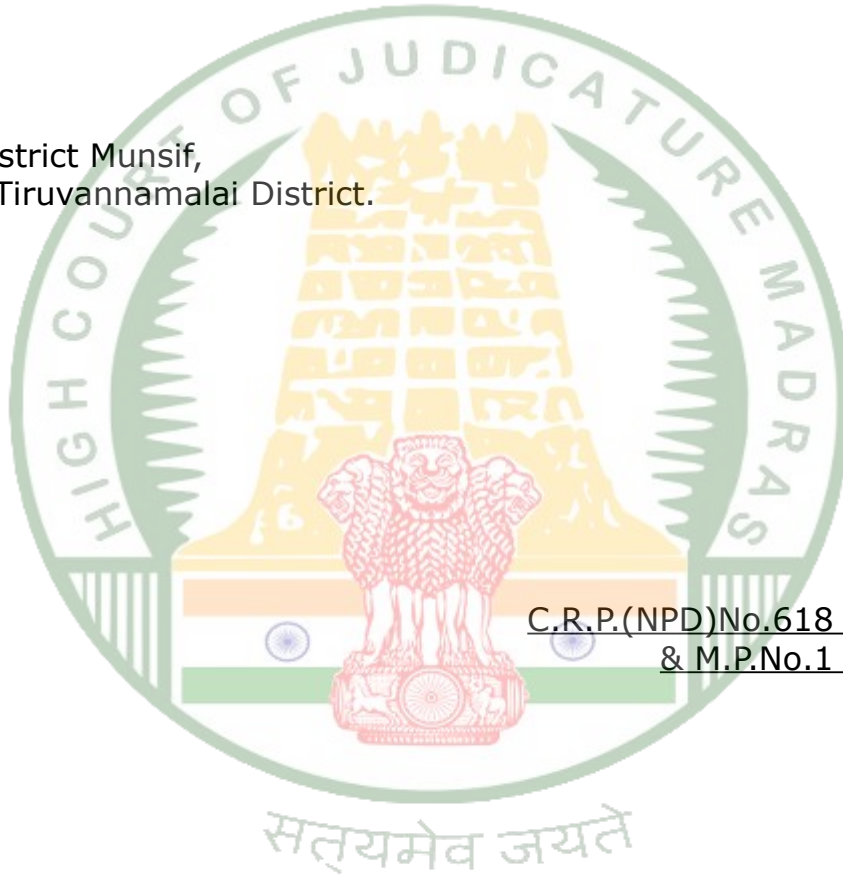
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V.M.VELUMANI,J.

gsa

To

The District Munsif,
Polur, Tiruvannamalai District.



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