

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.629 of 2015

K.Annadurai

.. Petitioner

Vs.

A.Kannan

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.01.2015 made in I.A.No.552 of 2014 in I.A.No.204 of 2014 in O.S.No.165 of 2011 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai, Erode District.

For Petitioner : Mr. I.C.Vasudevan

For Respondent : Mr.S.Kamadevan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 06.01.2015 made in I.A.No.552 of 2014 in I.A.No.204

of 2014 in O.S.No.165 of 2011 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai, Erode District.

2. The petitioner is plaintiff and respondent is defendant in O.S.No.165 of 2011 on the file of the District Munsif Court, Perundurai. The petitioner filed said suit for declaration to declare the right of use of the B schedule property by way of easementary by prescription and for permanent injunction restraining the respondent from interfering with the petitioner's right of use of the B schedule property. The respondent filed written statement in the month of March 2012 and is contesting the suit. Trial commenced, petitioner was examined as P.W.1 and examined his witness and closed his side. The respondent filed an application for recalling P.W.1. The said application was allowed and the suit was posted to 10.03.2014 for further cross-examination of P.W.1/petitioner. On that date, petitioner and his counsel did not appear and the suit was dismissed for default. The petitioner filed I.A.No.204 of 2014 for restoring the suit on the ground that he was suffering from fever and could not appear before the Court. The said application was allowed on payment of costs of Rs.500/- payable to the respondent

on or before 19.06.2014. The petitioner failed to pay the costs and application was dismissed on 20.06.2014.

3. The petitioner filed present application I.A.No.552 of 2014 for extension of time for payment of costs. According to the petitioner, fever reoccurred, he was bed ridden for one month and he could not contact the counsel and pay the costs. The respondent filed counter affidavit and opposed the said application and submitted that the petitioner has come out with the present application only to drag on the proceedings and prayed for dismissal of the application.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and medical certificate produced by the petitioner, dismissed the application on the ground that the petitioner has not let in any oral and documentary evidence to prove his contention and did not examine the Doctor who issued the medical certificate.

5. Against the said order of dismissal dated 06.01.2015 made in I.A.No.552 of 2014 in I.A.No.204 of 2014 in O.S.No.165 of 2011, the present Civil Revision Petition is filed by the petitioner/plaintiff.

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

7. From the materials available on record, it is seen that the petitioner participated in the trial and he was examined as P.W.1 and also examined P.W.2 on his side. He did not appear, when he was recalled for further cross-examination. The reason given by the petitioner for non appearance was accepted by the Court and I.A.No.204 of 2014 filed for restoring the suit was allowed on condition that the petitioner pays a sum of Rs.500/- to the respondent. The petitioner failed to pay the costs and therefore, the said application was dismissed. The petitioner filed present application for extension of time for payment of costs. He produced a medical certificate for his illness. The learned Judge taking note of the medical certificate produced by the petitioner rejected the same on the ground that the petitioner did not mark the same through the Doctor who issued the medical certificate and did not examine the Doctor, who issued the medical certificate and the petitioner also failed to let in oral evidence.

8. Considering the nature of relief as sought for by the petitioner and the fact that the petitioner was recalled for further cross-examination, in the interest of justice, the petitioner must be given an opportunity to contest the matter on merits.

9. For the above reason, impugned order of the learned Judge dated 06.01.2015 made in I.A.No.552 of 2014 is set aside and I.A.No.552 of 2014 will be allowed on condition that the petitioner shall pay a sum of Rs.2,500/- (Rupees two thousand five hundred only) to the respondent within a period of three weeks from the date of receipt of a copy of this order, failing which, impugned order of the learned Judge will stand confirmed.

10. With the above direction, the Civil Revision Petition is allowed. As the suit is of the year 2011, the learned Judge is directed to dispose the suit within three months from the date of payment of costs. No costs.

02.01.2018

Index : Yes/No

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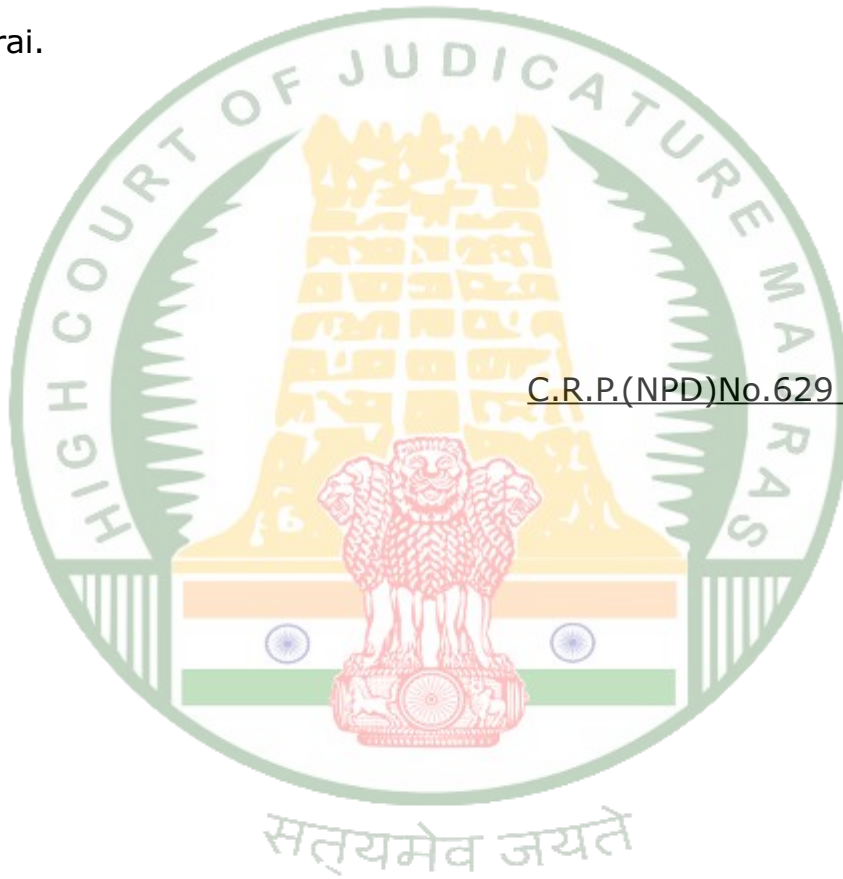
V.M.VELUMANI, J.

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To

The District Munsif cum Judicial Magistrate

Perundurai.



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