

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 26.04.2018****Coram: The Honourable Mr. Justice N. SESHASAYEE****C.R.P(NPD)No.1153 of 2012
and
M.P.No.1 of 2012**

1.Dharani Ammal
2.Smt.Lalitha @ Lalli
3.Shri.Dhandapani
4.Viji
5.Jayanthi

...Petitioners

Versus

S.Arannganathan

...Respondent

This Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the judgment and decree dated 03.02.2012 passed in I.A.No.277 of 2011 in O.S.No.9 of 2008 on the file of the Subordinate Judge, Ranipet Vellore District.

For Petitioners : Ms.S.A.Udayakumari

For Respondent : No Appearance

ORDER

The revision petitioners herein are defendants in O.S.No.9 of 2008 on the file of Sub Court, Ranipet. The respondent herein has laid the suit for specific performance of an agreement of sale alleged to have been executed by the father of the revision petitioners. Since the

revision petitioners/defendants did not entered appearance, they were set ex-parte and an ex-parte decree was passed on 10.04.2008. According to the petitioners, they gained knowledge about passing of decree through rumours shared in the locality. Therefore, they have approached the trial court with an application under Order IX Rule 13 C.P.C along with an application to condone a delay of 1,177 days in filing the aforesaid petition along with their written statement.

2. In his affidavit, the third defendant in the suit has averred that he had engaged certain Mr.N.T.Ravichandran, an advocate practising before Ranipet Court to appear on their behalf and had also handed over their Vakalat to him, but due to the default of the counsel in entering appearance, an exparte decree was happened to be passed.

3. The Trial Court did not accept the reason given by the petitioners and dismissed the application on the ground that ultimately it is the duty of the litigant to seek his counsel and not vice versa.

4. Heard Ms.S.A.Udayakumari, the learned counsel appearing for the petitioners. There is no representation for the respondents. It is not in dispute that the petitioners did not appear. In defending an action against the property, it would have been appropriate for the revision petitioners to be adequately vigilant in defending an action for specific performance. While this Court is not entirely appreciative of

the attitude of the revision petitioners, yet, it also takes into account the facts pleaded in the written statement based on which there is a possibility that the suit for specific performance might have been barred by limitation. Whether the suit is barred by limitation is a mixed question of law and fact, and if the suit is ultimately barred by limitation, then it goes to the root of the matter and to the very maintainability of the suit. In all such circumstances, it is imperative that the Court has acted as per Section 3 of the Limitation Act, since the responsibility is cast on the Court to ascertain whether the suit is barred by Limitation, even if the same is not pleaded by the defendants.

5. In the result, this Civil Revision Petition is allowed but on payment of cost of Rs.10,000/- which the revision petitioners are directed to pay the respondent before the Trial Court. Consequently, connected Miscellaneous Petition is closed.

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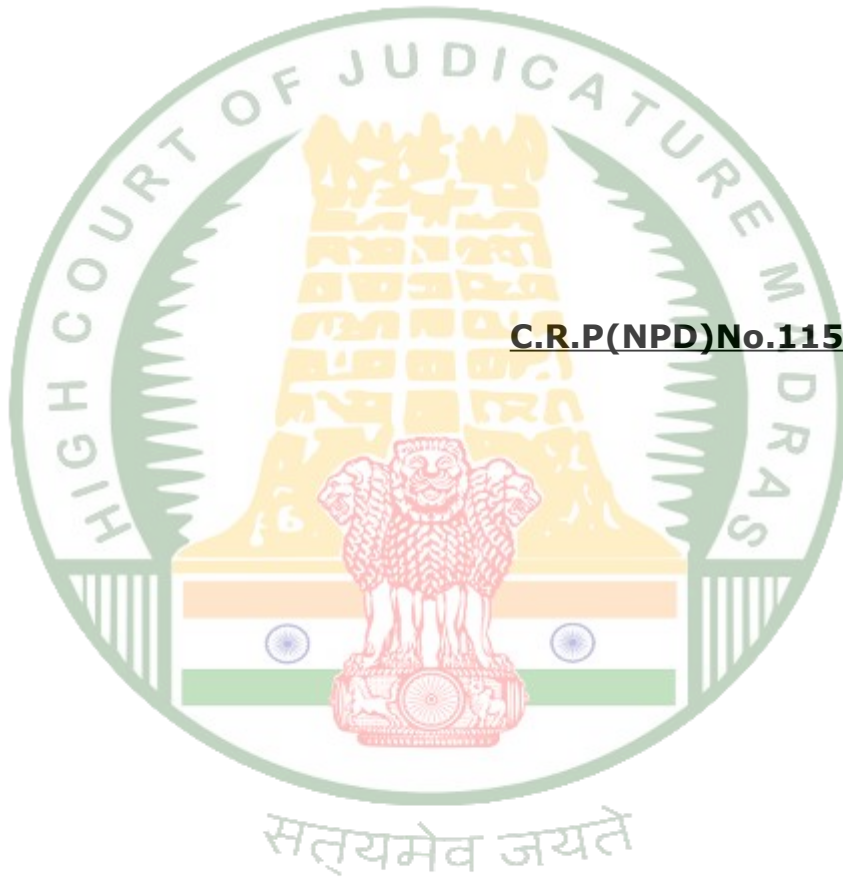
Index : Yes / No

To

The Subordinate Judge,
Ranipet, Vellore District.

N. SESHASAYEE, J.,

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