

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

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THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(NPD).No.2571 of 2016

and

C.M.P.No.13209 of 2016

S.K.Selvarajan

... Petitioner

Vs.

Gopalakrishnan

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure to set-aside the fair and final order of the learned Principal District Munsif, Tindivanam dated 14.03.2016 made in I.A.No.765 of 2014 in O.S.No.304 of 2010.

For petitioner : Mr.R.Thangavel

For Respondent : Ms.Jayalakshmi for M/s. Paul & Paul

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सत्यमेव जयते

ORDER

This Civil Revision Petition is filed to set-aside the fair and final order of the learned Principal District Munsif, Tindivanam dated 14.03.2016 made in I.A.No.765 of 2014 in O.S.No.304 of 2010.

2. According to the petitioner, the respondent/plaintiff has filed a suit in O.S.No.304 of 2010 on the file of the District Munsif Court, Tindivanam. The suit is for declaration and permanent injunction against the petitioner/defendant herein. In the aforesaid suit, the summons was issued on 23.08.2010 and the same was returned with an endorsement that the petitioner was not residing in the said address for the past about four years, prior to the date of summons. Thereafter, on 06.09.2010, one Sethuraman entered appearance for the petitioner. An ex-parte decree was passed in the aforesaid suit. The petitioner has filed an Interlocutory application in I.A.No.765 of 2014 before the Trial Court to condone the delay of 977 days in filing the petition to set aside the ex-parte decree. The Court below dismissed the said application without accepting the reasons stated by the petitioner.

3. According to the petitioner, the respondent has made a specific allegations that the petitioner is not residing at Sembiyambakam Village, Tindivanam District and he is residing only at Mettur as stated in the affidavit (the address has been stated in the affidavit and petition). The petitioner has filed the proof affidavit. Thereafter, the petitioner was examined and he deposed that he has not engaged the aforesaid counsel to appear on his behalf in the afore said suit.

Therefore, the Court below without considering the aforesaid aspect, by comparing the signature, has dismissed the petition on the ground that the petitioner has not examined the aforesaid counsel appearing for the petitioner at that time and compared the signature in the vakalat as well as in the affidavit. Therefore, the Court below has not believed the statement of the petitioner and dismissed the petition as unsustainable.

4.The learned counsel appearing for the respondent/plaintiff submitted that the petitioner has made an allegation against the respondent and therefore, the Court below has rightly dismissed the said application. On a perusal of the materials on records and the fact remains that the respondent has filed the aforesaid suit in O.S.No.304 of 2010 for declaration and permanent injunction. After coming to know about the Ex-parte decree passed in an Interlocutory Application in I.A.No.765 of 2014 to condone the delay in filing the application, the petitioner has filed this present Civil Revision Petition.

5.The learned counsel appearing for the petitioner has submitted that the court below has observed that the said Sethuraman counsel has not been examined. Therefore, if an opportunity has been granted for the petitioner to prove the allegation made in the averments by

adducing oral and documentary evidence in the said suit. Since, the allegations made is serious in nature, this Court has considered the submissions made by the counsel and also taking into consideration that the summons which was served on the petitioner returned with an endorsement that the petitioner was not residing in the afore said address.

6. Prima facie materials shows that the petitioner has not residing in the address, which was shown in the plaint. As far as the other allegation is concerned, it is for the petitioner to prove himself, if an opportunity has been given to the petitioner, before the trial Court. If the petitioner has not proved his case, the petitioner has to face the consequence for filing the false allegations in the affidavit or if the allegation is proved against the counsel, the same view has to be taken by the trial Court.

7. In the light of the above, by providing an opportunity to the petitioner, the order dated 14.03.2016 passed in I.A.No.765 of 2014 is liable to be set aside.

8. In fine, the Interlocutory Application in I.A.No.765 of 2014 is set aside and the Civil Revision Petition is allowed and remanded to

the Court below to decide the application on merits and pass an appropriate orders afresh, after providing an opportunity to the parties concerned, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

15.03.2018

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Note: Issue order copy by 21.06.2018

To

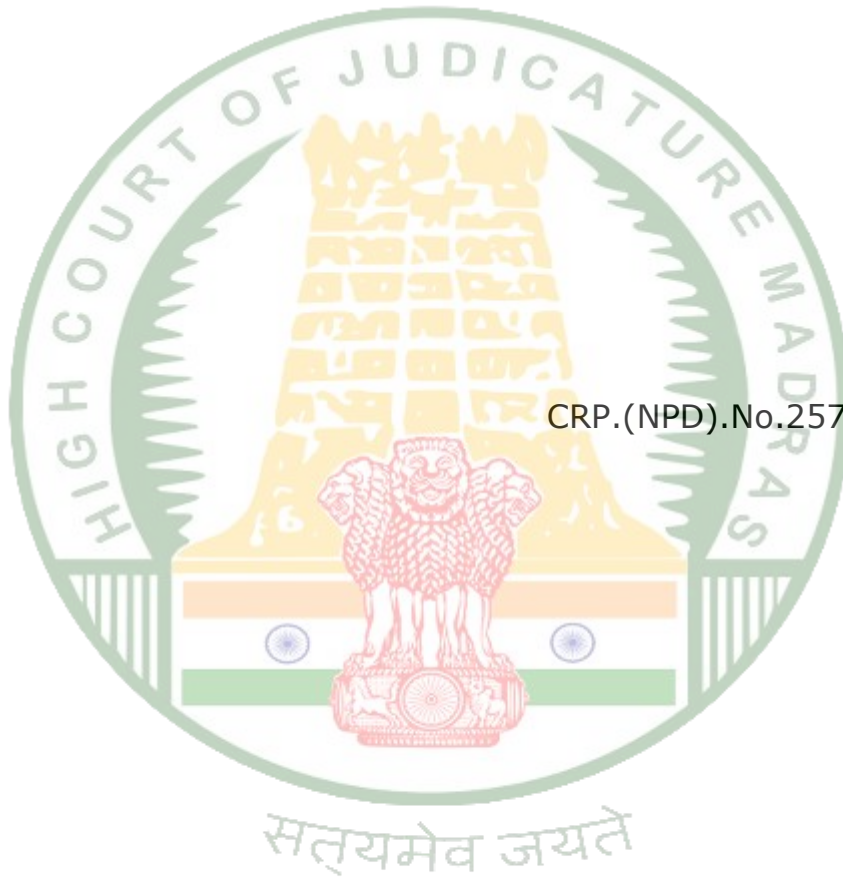
The Principal District Munsif,
Tindivanam.



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D.KRISHNAKUMAR.J,

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