

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P. (NPD) No.3/2006

1. Kalliappan  
2. Sivalingam  
3. Muniappan  
4. Munusamy ..... Petitioners

-vs-

1. Abdul Kaleem  
2. Sayeek Habibulla  
3. Noorunnissa ..... Respondents

PRAYER: Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order of the Learned District Munsif, Dharmapuri dated 16.09.2005 made in I.A.422/2004 in O.S.200/96.

For Petitioner : Mr. S. Saravanakumar  
For Respondent : Not ready in notice for R(1) to (3)

O R D E R

The above Civil Revision Petition is filed challenging the order dated 16.09.2005 in I.A. No.422/2004 in O.S. No.200/1996, on the file of the District Munsif Court, Dharmapuri, in and by which, the application filed by the Revision Petition to condone the delay of 1518 days in filing the application to set aside the exparte decree has been dismissed.

2.The facts in nutshell are as follows:

The respondents herein had filed a suit for declaration and injunction restraining the revision petitioner from interfering with a peaceful possession of the suit property and for a mandatory injunction directing the revision petitioner to demolish the hut put up in the suit property. The respondents claimed a right to the property through one Mr.Syed Alimulla. It is the case of the respondents/defendants that the petitioners wanted to usurp the property as the respondent had refused to lease out the property to them. To achieve this illegal end they had trespassed into the property and had tried to illegally put up hut, which the respondent had successfully thwarted.

Thereafter, the respondents would submit they had filed the suit for injunction.

3. The revision petitioner had filed a written statement denying the above statements and contending that he had entered into oral lease with the respondents, and he was in possession of the property as a cultivating tenant. This written statement had been filed and verified by the revision petitioner on 26.08.1997.

4. Thereafter, since the revision petitioner had not appeared in court for the trial, the ex parte decree came to be passed on 28.03.2000. The revision petitioner filed the impugned I.A. contending that he had entrusted the brief to one Mr.K.Ramachandran, who had prepared the written statement and the counter in the I.A application and had informed the revision petitioner that he would inform the revision petitioner as and when the matter is listed. He further contended that only when the summons for EP proceedings have been received he had come to know about the exparte decree and therefore, the delay in filing the application to set aside the exparte decree. The respondents have filed a detailed counter, wherein they have contended that the revision petitioner was very well aware about the proceedings and has deliberately kept away on the pretext of protracting the proceedings. After coming to the know about the ex parte decree, the revision petitioner has filed another suit in O.S. No.367/2004 and had clandestinely obtained an interim order in I.A.No.540/2004. Therefore, they sought for dismissal of the application.

5. The learned District Munsif, Dharmapuri, taking into consideration all the above facts dismissed the application on 18.09.2005. Challenging this order the revision petitioners are before this court.

6. From a reading of the affidavit and the counter affidavit filed in support of the impugned application and also the evidence of the revision petitioner in the order impugned, it is seen that the revision petitioner had knowledge about the exparte decree, even within a year from the date of the exparte decree. Despite having knowledge of this exparte decree, the revision petitioner has not taken any steps to set aside the decree. Thereafter suppressing this decree, the revision petitioners have filed a subsequent suit and obtained an order of injunction. Admittedly, there is an injunction operating against the revision petitioners in the O.S.No.200/1996. . The revision petitioners have suppressed this order and obtained an ex parte order in I.A.No.540/2004 in O.S.No.367/2004. It is no doubt true that the Courts should generally be liberal in condoning the delay, however when subterfuge/fraud is played on court by the applicant and the same is brought to the notice of this Court, the Court cannot show any indulgence. The learned District Munsif, Dharmapuri, has rightly dismissed the application and I find no infirmity in the impugned order.

7. In the result, this Civil Revision Petition stands dismissed. There shall be no order as to costs.

Sd/-  
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

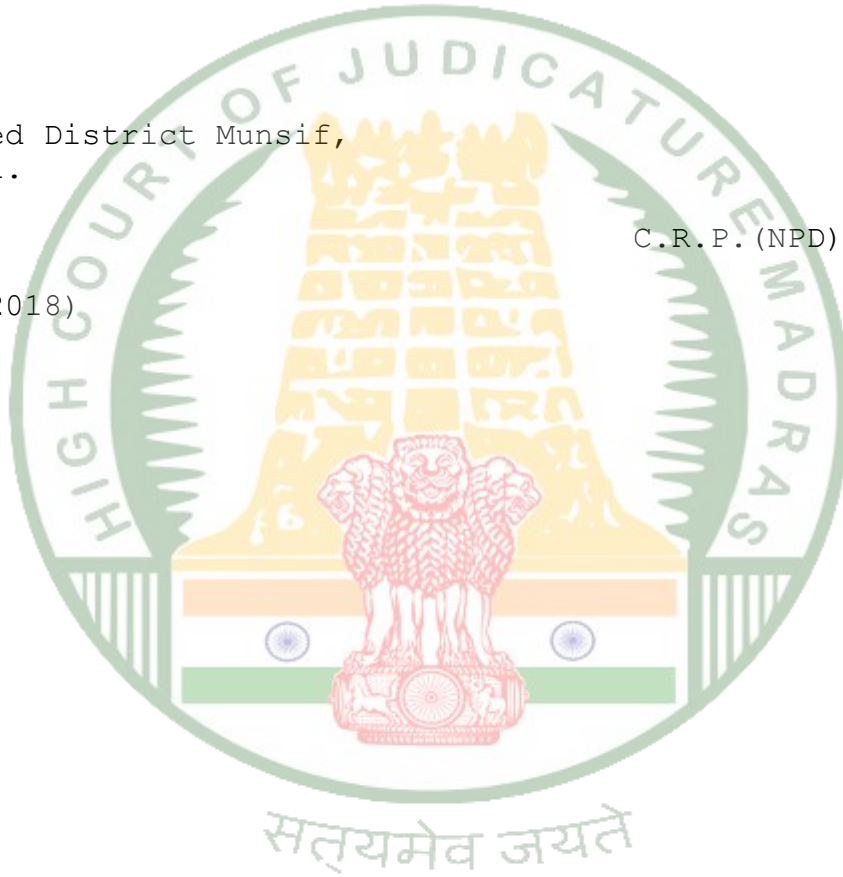
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To

The learned District Munsif,  
Dharmapuri.

C.R.P. (NPD) No.3/2006

RK (CO)  
EU (18/09/2018)



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