

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2542 of 2013
and M.P.No.1 of 2013

Manickam

.. Petitioner

Vs.

Ponnusamy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 24.11.2012 made in I.A.No.1797 of 2009 in O.S.No.587 of 2003 on the file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.S.Jayakumar

For Respondent : Not ready in notice

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 24.11.2012 made in I.A.No.1797 of 2009 in O.S.No.587 of 2003 on the file of the Principal District Munsif Court, Salem.

2.The petitioner is defendant and respondent is plaintiff in O.S.No.587 of 2003 on the file of the Principal District Munsif Court, Salem. The respondent filed the said suit for permanent injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the suit property. An exparte decree was passed on 30.12.2003. The petitioner filed I.A.No.1797 of 2009 under Section 5(1) of the Limitation Act to condone the delay of 1800 days in filing the petition to set aside the exparte decree. According to the petitioner, he filed O.S.No.1164 of 2007 against the respondent and two others for declaration and injunction. In the said suit, the respondent filed written statement on 18.12.2007 stating that he filed present suit O.S.No.587 of 2003 against the petitioner and obtained exparte decree. No summon was served on the petitioner in the present suit. The petitioner engaged one A.Janarthanam, Advocate, Salem and filed caveat. The said Advocate took notice and did not inform the petitioner. The said Advocate died on 08.03.2007. In view of the same, he could not get any information with regard to the suit.

3.The respondent filed counter affidavit and contended that the petitioner was aware of the suit proceedings. The suit summon

was served on the petitioner and the same can be verified from the Court records. Suppressing the present suit, the petitioner filed O.S.No.1164 of 2007. The petitioner engaged Senior Advocate, Salem and entered appearance in the present suit. It is not correct to state that no summon was served on the petitioner.

4.Before the learned Judge, the petitioner examined himself as P.W.1 and did not mark any document. The respondent examined himself as R.W.1 and marked three documents as Exs.R1 to R3.

5.The learned Judge considering the averments in the affidavit, counter affidavit, documents filed by the parties, admission of the petitioner during cross examination that suit summon was served on him and he gave vakalat to the Advocate and entered appearance in the suit and certified copies of the suit summon, vakalat and A-diary filed by the respondent, dismissed the application.

6.Against the said order of dismissal dated 24.11.2012 made in I.A.No.1797 of 2009 in O.S.No.587 of 2003, the petitioner has come out with the present Civil Revision Petition.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. The contention of the learned counsel for the petitioner for not contesting the suit is that suit summon was not served on him and Advocate A. Janarthanam took notice on his behalf did not inform him about the same. The said contention is not correct and contrary to the facts. When the petitioner examined himself as P.W.1, he admitted receipt of suit summon and entering appearance through Advocate. The respondent also produced certified copies of the suit summon, which shows that petitioner had received suit summon. The certified copies of the vakalat and A-diary produced by the respondent reveal that petitioner had entered appearance in the suit, but did not contest the same. The petitioner is blaming his earlier Advocate who is no more. In number of cases, this Court and Hon'ble Apex Court had deprecated the practice of blaming the earlier Advocate to get relief. From the available records, it is seen that the petitioner has not approached the Court with the clean hands.

9.The learned Judge has considered all the above facts and dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 24.11.2012 made in I.A.No.1797 of 2009 in O.S.No.587 of 2003.

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

22.03.2018

Index :: Yes/No
gsa

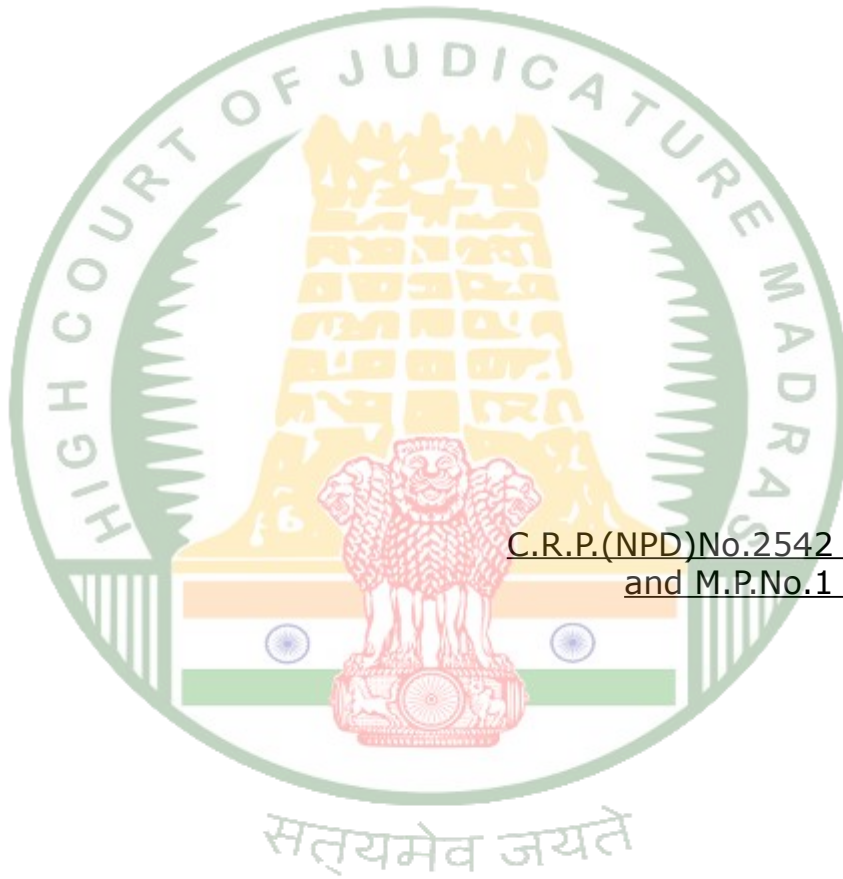
To

The Principal District Munsif,
Salem.

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V.M.VELUMANI,J.

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