

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4737 of 2013
and M.P.No.1 of 2013

1.C.Kasthuri Ammal(Deceased)

2.Anandhan

.. Petitioners

(2nd petitioner brought on record as legal heir of deceased 1st petitioner vide order of Court dated 03.04.2017 made in C.M.P.No.2449 of 2016 in C.R.P.No. 4727 of 2013)

Vs.

K.Balaji

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C, against the fair and decretal order dated 04.09.2013 made in I.A.No.29 of 2011 in O.S.No.112 of 2007 on the file of the IV Additional District Court, Tiruvallur at Ponneri.

For Petitioners : Mr. Adithya Varadarajan for

Mr.N.Anand Venkatesh

For Respondent : Mr.V.Girish Kumar
Mr.M.Thiyagarajan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 04.09.2013 made in I.A.No.29 of 2011 in O.S.No.112 of 2007 on the file of the IV Additional District Court, Tiruvallur at Ponneri.

2. The first petitioner is defendant and respondent is plaintiff in O.S.No.112 of 2007 on the file of the IV Additional District Court, Tiruvallur at Ponneri. The respondent filed said suit for specific performance of agreement of sale dated 23.11.2006. Originally, the suit was filed before the Principal District Court, Tiruvallur. The first petitioner filed written statement and is contesting the suit. The respondent examined two witnesses and has closed his side. The first petitioner filed proof affidavit and did not appear before the Court for being cross-examined. At that stage, the suit was transferred to Fast Track Court No.IV (Additional District Court), Ponneri. According to the first petitioner, her advocate at Tiruvallur handed over the bundle to her and informed her that notice will

come from the Fast Track Court No.IV (Additional District Court), Ponneri and that she can engage an advocate at Ponneri and contest the case. She further contended that no notice was served on her from the Fast Track Court No.IV, (Additional District Court), Ponneri. An exparte decree was passed on 13.11.2009. She came to know about the exparte decree only when she received notice in the execution proceedings filed by the respondent. Immediately, she filed present I.A.No.29 of 2011 to condone the delay of 415 days in filing petition to set aside the exparte decree passed against the first petitioner on 13.11.2009.

3. The respondent filed counter affidavit and opposed the said application.

4. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application on the ground that the first petitioner ought to have verified with her advocate with regard to pendency of the suit and reasons given by the first petitioner are not valid.

5. Against the said order of dismissal dated 04.09.2013 made in I.A.No.29 of 2011 in O.S.No.112 of 2007 on the file of the IV Additional District Court, Ponneri, Tiruvallur.

6. Pending Civil Revision Petition, first petitioner died and second petitioner, who is the legal heir of the first petitioner, was brought on record.

7. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

8. From the materials available on record and impugned order of the learned Judge, it is seen that the respondent has filed suit for specific performance of agreement of sale on the file of the Principal District Court, Tiruvallur. The first petitioner was contesting the suit by filing written statement as well as by cross-examining the witness of respondent and also filed proof affidavit on her behalf. At that stage, the suit was transferred to Fast Track Court No.IV, (Additional District Court), Ponneri. From the impugned order of the learned Judge, it is seen that no notice was sent to the first petitioner by Fast Track Court No.IV, (Additional District Court),

Ponneri, about the suit and date of hearing. The learned Judge having taken note of the said fact erred in holding that the first petitioner ought to have verified about the stage of the suit at Ponneri Court. The learned Judge failed to consider the contention of the first petitioner that advocate at Tiruvallur, returned the bundle to her to engage the advocate at Ponneri after receiving notice from the Court at Ponneri and at Ponneri, no advocate was representing the first petitioner after the suit was transferred.

9. In view of the above facts, the reasons given by the first petitioner for condonation of delay in filing application to set aside the exparte decree are valid, sufficient and are acceptable. For the above reason, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside. The suit in O.S.No.112 of 2007 is restored to file. The learned Judge is directed to take up the application filed by the first petitioner to set aside the exparte decree and dispose the same within a period of one month from the date of receipt of a copy of this order. The learned Judge is also directed to dispose of O.S.No.112 of 2007 on merits and in accordance with law, within a period of two months from the date of

disposal of the application after issuing notice to the parties in the suit with date of hearing.

10. With the above direction, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

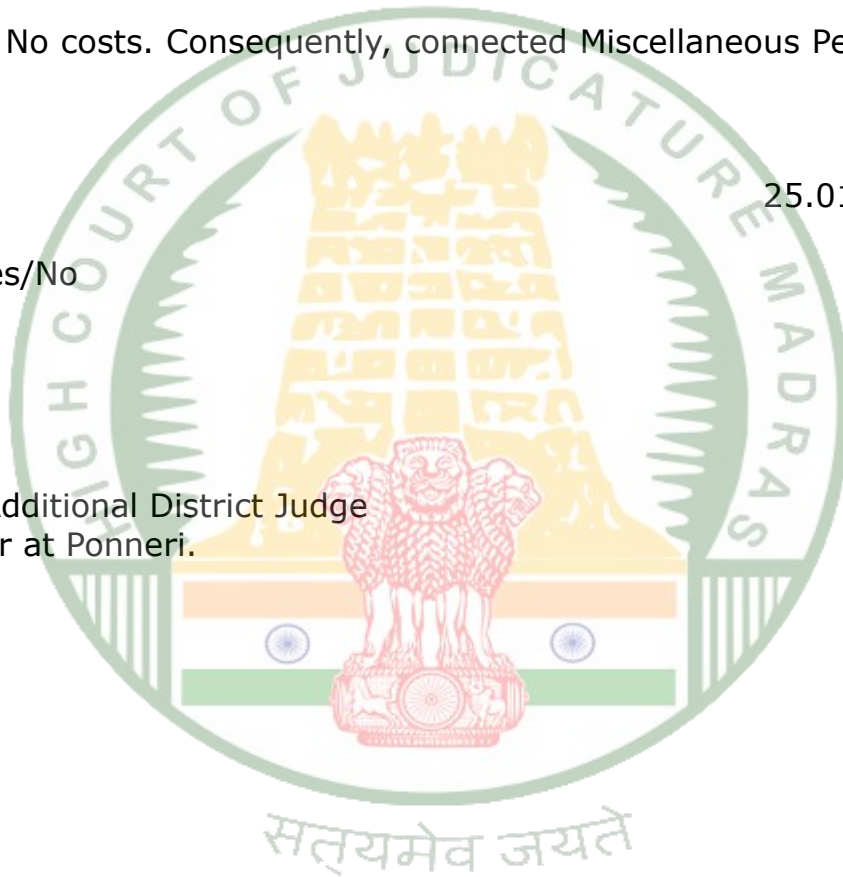
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Index:Yes/No

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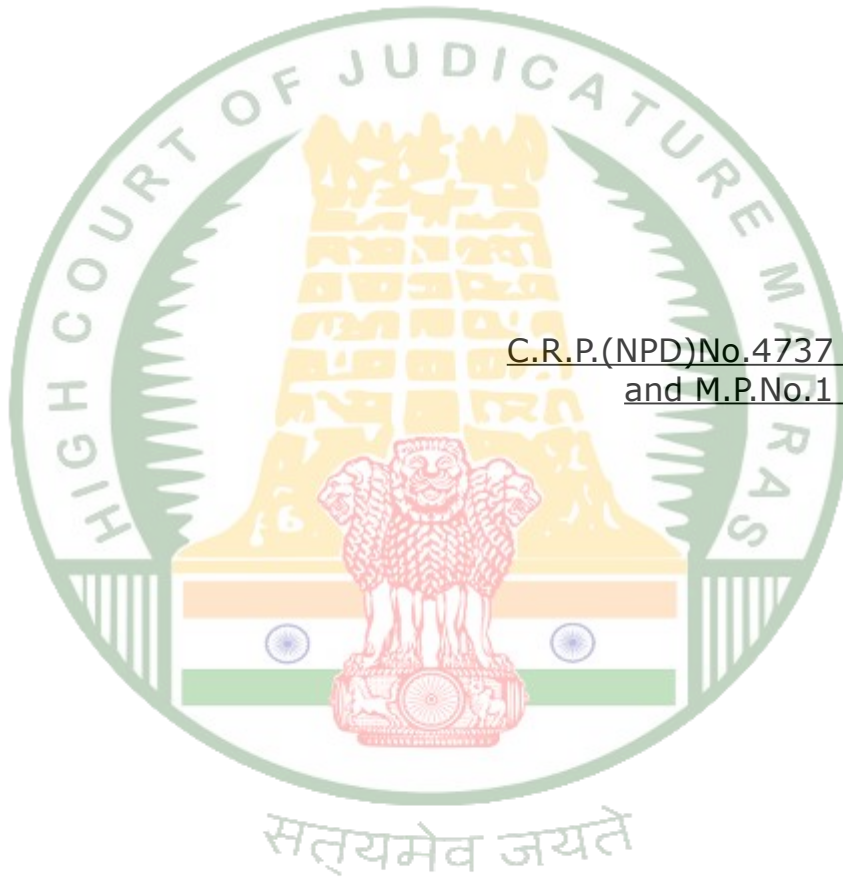
The IV-Additional District Judge
Tiruvallur at Ponneri.



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V.M.VELUMANI,J.

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