

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(NPD)No.1306 of 2010
and
M.P.No.1 of 2010

N.Dhandapani ... Petitioner

vs.

1.Rajammal

2.Venkittammal

3.Saraswati

4.Srinivasan

5.N.Varadharajan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 31.08.2009 in I.A.No.2579 of 2007 in IA.No.1514 of 2007 in OS.No.660 of 1993, on the file of District Munsif Court, Tiruppur.

For Petitioner : Mr.S.A.Sayed Shuhaibb

For Respondents : Mr.N.Damodharan,
for Mr.D.Krishnapradeep

ORDER

The revision petitioner is the second petitioner in IA.No.2579 of 2007 and third defendant in OS.No.660 of 1993, on the file of the District Munsif, Tiruppur. The revision petitioner along with his brother filed an application in IA.No.2579 of 2007 in IA.No.1514 of 2007 in OS.No.660 of 1993, on the file of District Munsif Court, Tiruppur under Order IX Rule 7 to set aside the exparte order passed against him in the final decree proceedings in IA.No.1514 of 2007 in OS.No.660 of 1993.

2. In the affidavit filed along with the application in IA.No.2579 of 2007, the petitioner had contended that he met with an accident during third week of July 2003 and suffered a fracture of his leg. His further contention is that he was also suffering from amnesia and that his brother N.Varadharajan could not attend the court as a result of the accident and therefore, both of them were set exparte on 28.08.2007.

3. The learned District Munsif, Tiruppur after analysing the evidence on record, dismissed the application filed by the petitioners. The grounds on which the application was dismissed by the learned District Munsif, Tiruppur are as follows:

(i) The petitioners did not mention anything about C.T. Scan reports which were marked as Ex.P1 and Ex.P2 in their affidavit and the doctor who issued the reports was not examined.

(ii) The C.T. Scan reports Ex.P1 and Ex.P2 are of the year 2007 and even according to the second petitioner in IA.No.2579 of 2007, suffered a fracture of his leg during July 2003 on account of the accident.

4. A perusal of records shows that the revision petitioner and his brother did not adduce sufficient evidence to set aside the exparte order passed against them. The Advocate Commissioner's report also shows that the Advocate Commissioner issued notice to the revision petitioner and his brother and the same was refused to be received by both of them.

5. Mr.S.A.Sayed Shuhaibb, learned counsel appearing for the revision petitioner would contend that no notice was served on them by the Advocate Commissioner and that it is enough if the revision petitioner is permitted to file his objections to the Advocate Commissioner's report.

6. The learned counsel appearing for the respondents did not raise any serious objection to the request made by the learned counsel appearing for the civil revision petitioner.

7. It is seen that the Advocate Commissioner has allotted some shares in respect of A-Schedule property to the revision petitioner and his brother. In the interests of justice, this court is of the opinion that an opportunity can be given to the revision petitioner to file his objections to the Advocate Commissioner's report and the learned District Munsif, Tiruppur is directed to consider the objections filed by the revision petitioner before passing final decree.

8. The learned District Munsif, Tiruppur is also directed to pass the final decree within a period of one month from the date of receipt of a copy of this order.

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9. With the above observations, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

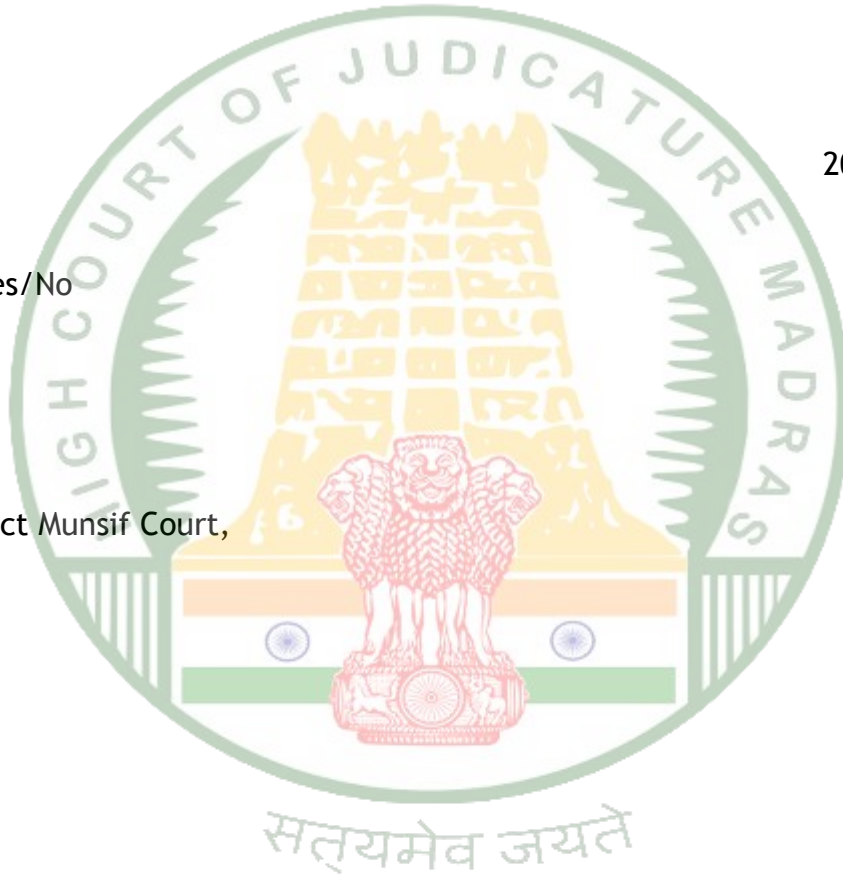
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Index : Yes/No

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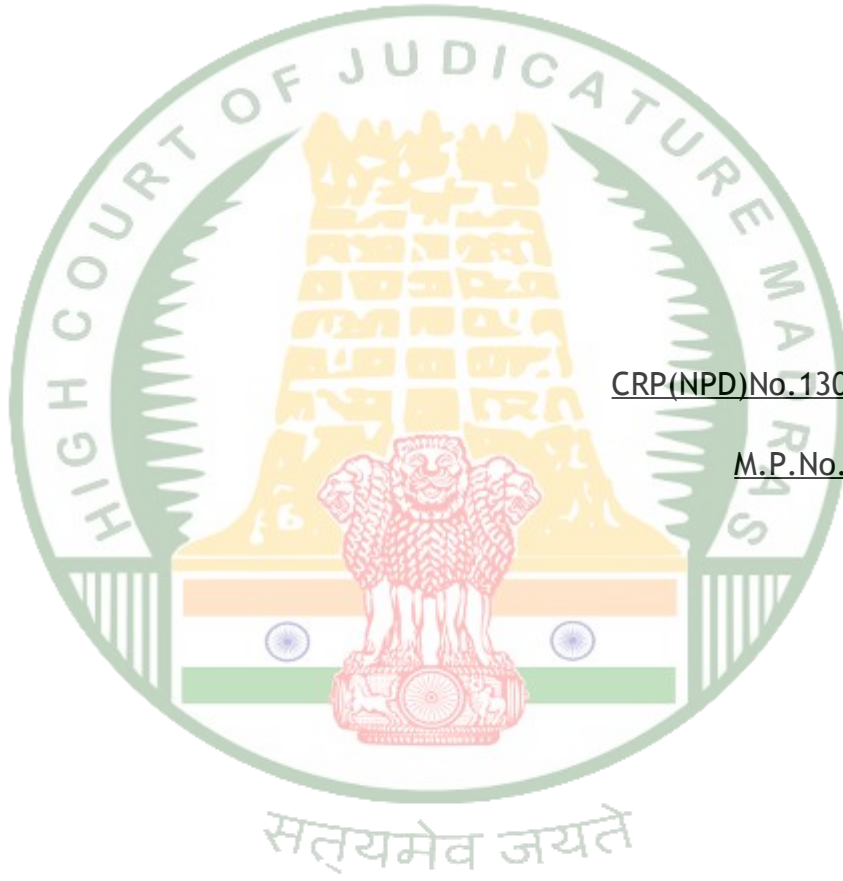
The District Munsif Court,
Tiruppur.



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R.HEMALATHA, J.

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