

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(NPD).No.2802 of 2010 and
M.P.No.1 of 2010

Rajagopal

... Petitioner

Vs.

1. Govindammal
2. Dhanalakshmi
3. Gomathi
4. Manickam

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the orders dated 05.12.2000 passed in I.A.No.531 of 2000 in O.S.No.894 of 1992 by the District Munsif cum Judicial Magistrate, Omalur.

For Petitioner : Mr.P.Mani

For Respondents : Mr. R.Subramanian

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ORDER

The civil revision petitioner is the defendant in O.S.No.894 of 1992 on the file of the District Munsif cum Judicial Magistrate, Omalur. The respondents/plaintiffs filed the above suit praying for maintenance of a sum of Rs.1,000/- per month from the defendant. They further prayed for creating a charge over the B schedule property. The suit was decreed exparte on 07.02.1995. Subsequently, the respondents filed E.P.No.38 of 1999 before the District Munsif, cum Judicial Magistrate, Omalur on 17.06.2000 to execute the decree. Thereafter, the civil revision petitioner filed a petition under Order IX Rule 13 of the Code of Civil Procedure praying to set aside the exparte decree passed against him on 07.02.1995 along with a petition in I.A.No.531 of 2000 under Section 5 of the Limitation Act to condone the delay of 1941 days in filing the petition to set aside the exparte decree passed on 07.02.1995.

2. The learned District Munsif cum Judicial Magistrate, Omalur, after full contest, dismissed the petition in I.A.No.531 of 2000 under Section 5 of the Limitation Act filed by the revision petitioner. Aggrieved over the same, he filed the present civil revision petition.

3. Mr.P.Mani, learned counsel appearing for the civil revision petitioner contended that in the suit in O.S.No.894 of 1992, the civil revision petitioner/defendant was not served with the summons and this aspect has not been considered by the learned District Munsif cum Judicial Magistrate, Omalur. He further contended that the exparte decree passed on 07.02.1995 was liable to be set aside.

4. Per contra, Mr.R.Subramanian, learned counsel appearing for the respondents contended that the suit was decreed in the year 1995 and since the present civil revision petitioner did not pay the maintenance amount, E.P.No.38 of 1999 was filed before the District Munsif cum Judicial Magistrate, Omalur. His further contention is that the property was also sold in court auction and 1/3 of the sale consideration was deposited in court and since it was represented that the present civil revision petition is pending before this court, the respondents/plaintiffs were not able to withdraw the amount and therefore the civil revision petition is liable to be dismissed.

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5. A perusal of the records show that the respondents/plaintiffs had prayed for a sum of Rs.1,000/- per month as maintenance from the defendant and the suit was decreed exparte on 07.02.1995. It also appears

from the records that the respondents/plaintiffs filed a Pauper O.P.No.14 of 1991 and a notice was issued to the present revision petitioner. The civil revision petitioner appeared through an advocate and several adjournments were granted to him for filing his counter and subsequently, the petition was allowed.

6. The learned District Munsif cum Judicial Magistrate, Omalur had taken this aspect into consideration and observed that the defendant cannot feign ignorance about the institution of the suit filed by his wife and children seeking for maintenance from him. The civil revision petitioner has not shown sufficient cause to condone the delay of 1941 days. Also considering the fact that the respondents/plaintiffs have filed the suit for maintenance, I am of the view that the delay of 1941 days in filing the petition to set aside the exparte decree, cannot be condoned. The orders passed by the District Munsif cum Judicial Magistrate, Omalur is perfectly in order and I do not see any reason to interfere with the findings recorded by the trial court.

7. In the result.

(i) The civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The orders dated 05.12.2000 passed in I.A.No.531 of 2000 in O.S.No.894 of 1992 by the District Munsif cum Judicial Magistrate, Omalur is upheld.

(iii) The District Munsif cum Judicial Magistrate, Omalur is directed to dispose of the execution petition in E.P.No.38 of 1999, within a period of three months from the date of receipt of a copy of this order.

22.07.2019

mst

Index : Yes/No

Internet : Yes/No

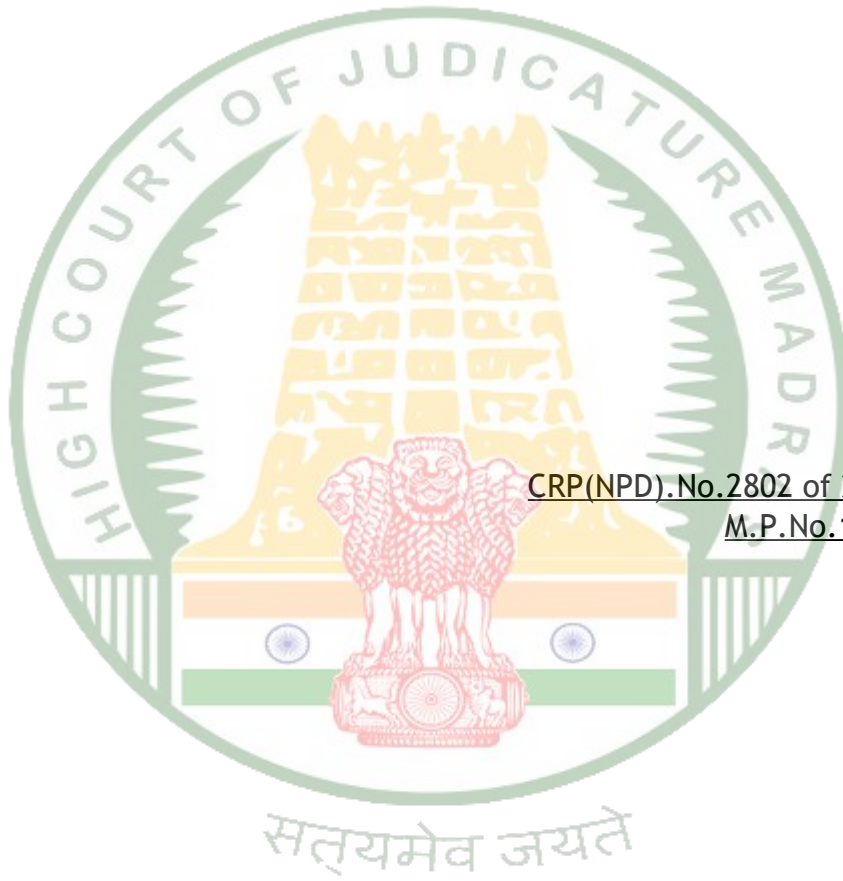
Speaking/non speaking

To

The District Munsif cum Judicial Magistrate, Omalur.

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R.HEMALATHA, J.,
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