

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2019

Coram

The Honourable Mrs. **Justice R.HEMALATHA**

C.R.P.(NPD)No.4389 of 2010

and

M.P.No.1 of 2010

1. Ilango
2. Mathivanan
3. Saraswathi

... Petitioners

Vs.

1. Veeramani
2. Manivannan
3. Manivelan
4. Manimaran
Muthulakshmi (died)
5. Saraswathi
6. Malar Vizhi

... Respondents

This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the Fair and Decretal Order dated 10.11.2010 passed in I.A.No.446 of 2010 in O.S.No.107 of 2004 by the District Munsif Court, Rasipuram.

For Petitioner : Ms.K.Velang Kanni
for Mr.T.Dhanyakumar

For Respondents : No appearance

ORDER

The Revision Petitioners are the Plaintiffs 2,3 and 4 in O.S.No.107 of 2004 on the file of the District Munsif Court, Rasipuram.

2.The plaintiffs filed the suit against the respondents/ defendants for a permanent injunction restraining them from interfering with their peaceful possession and enjoyment of the suit property. The defendants filed a written statement and both parties went for trial.

3.A perusal of the records shows that since the defendants did not come forward to adduce evidence, they were set exparte on 08.06.2006. The order of the trial court dated 08.06.2006 reads as follows:-

"D.W.1 called absent. No representation. Plaintiff side already examined. Already Ex.A2 to A7 marked. Claim proved. Suit is decreed as prayed for with cost."

Subsequently, the respondents/defendants filed a Petition in I.A.No.446 of 2005 under Order IX Rule 13 CPC praying to set aside the exparte decree passed against them on 08.06.2006. The

learned District Munsif, Rasipuram, after analysing the evidence on record allowed the petition, against which the present Civil Revision Petition is filed by the plaintiffs 2, 3 and 4.

4.The learned counsel appearing for the revision petitioners would contend that when the respondents/defendants did not prove their contentions mentioned in their affidavit, the learned District Munsif ought to have dismissed the application in I.A.No.446 of 2010 filed under Order IX Rule 13 CPC. It is seen from the records that the learned District Munsif set the defendants exparte for not appearing on 08.06.2006 and in the affidavit it is specifically contended by the respondents/defendants that the first respondent/first defendant could not appear before the Court on 08.06.2006 since he was indisposed. It is also contended in the affidavit that other respondents were busy in their official duty and therefore could not attend the Court. The trial Court accepted the contentions of the respondents/defendants in I.A.No.446 of 2010 in O.S.No.107 of 2004 and allowed the petition on payment of costs of Rs.1,500/- to the civil revision petitioners/plaintiffs on or before 29.11.2010.

5.The order passed by the learned District Munsif, Rasipuram on 08.06.2006 clearly shows that the learned District Munsif did not

go into the merits of the case and instead passed the order by merely stating that because the respondents/defendants are not present, the claim made by the plaintiffs is proved. Therefore, the ex parte decree passed against the respondents/defendants has got to be allowed. All the observations made by the trial Court are based on sound principles of law and I do not find any reason to interfere with the orders passed by the trial Court. Accordingly, the civil revision petition is dismissed.

6. In the result, the civil revision petition is dismissed. No costs. Consequently, connected M.P. is closed.

24.06.2019

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Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

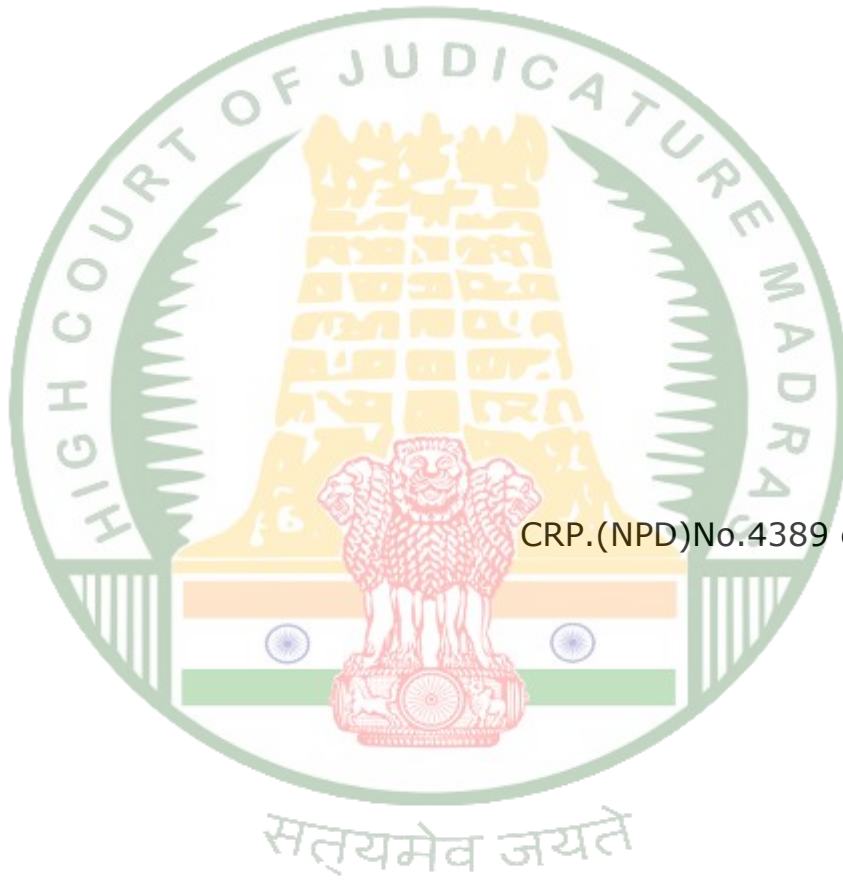
To

The District Munsif Court,
Rasipuram.

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R.HEMALATHA.J.,

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