

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.1427 of 2011 &

M.P.No.1 of 2011

Mr.E.Dhanapalan

.. Petitioner

Vs.

1.Mrs.Siyathammal
2. Mrs.Varadammal

.. Respondents

PRAYER: Civil Revision Petition filed under section 115 of Code of Civil Procedure against the fair and decreetal Order dated 22.02.2011 made in I.A.No.390 of 2011 in I.A.No.5307 of 2010 in O.S.No.124 of 2005 on the file of the XIV Assistant City Civil Court, Chennai.

For Petitioner : Mr.M.A.Abdul Wahab

For Respondents : Mr.Shaik Sulaiman – R1

No appearance – R2

ORDER

This revision has been filed as against the Order of the trial Court in dismissing the application filed to reject the application filed in I.A.No.5307 of 2010 in O.S.No.124 of 2005.

2. This application has been originally filed to reject the application filed by the respondents to set aside the exparte decree on the ground that they had knowledge about the exparte decree recently. Accordingly, an application to set aside the exparte decree has been filed within 30 days from the date of their knowledge.

3. Whereas it is the contention of the revision petitioner that such an application ought to have filed along with an application under section 5 of the Limitation Act, since the respondents were served with summons earlier. By making such a contention, the revision petition sought to reject the application filed under Order 9 Rule 13 of Code of Civil Procedure.

4. The trial Court dismissed the application on the ground that such an allegation can be raised by filing counter and not by filing an application to reject the application filed by the respondents, which has been filed to set aside the exparte decree. Without filing a counter, the above application cannot be rejected. Further,

during submissions, it is submitted by the learned counsel for the first respondent that the exparte decree has already been set aside and the suit is in the final stage and the revision petitioner has also participated in the trial. In view of the above submissions, nothing survives in this revision petition.

5. Accordingly, this Civil Revision Petition is dismissed as infructuous. Consequently, the connected miscellaneous petition is closed. No cost.

28.02.2019

vrc

To

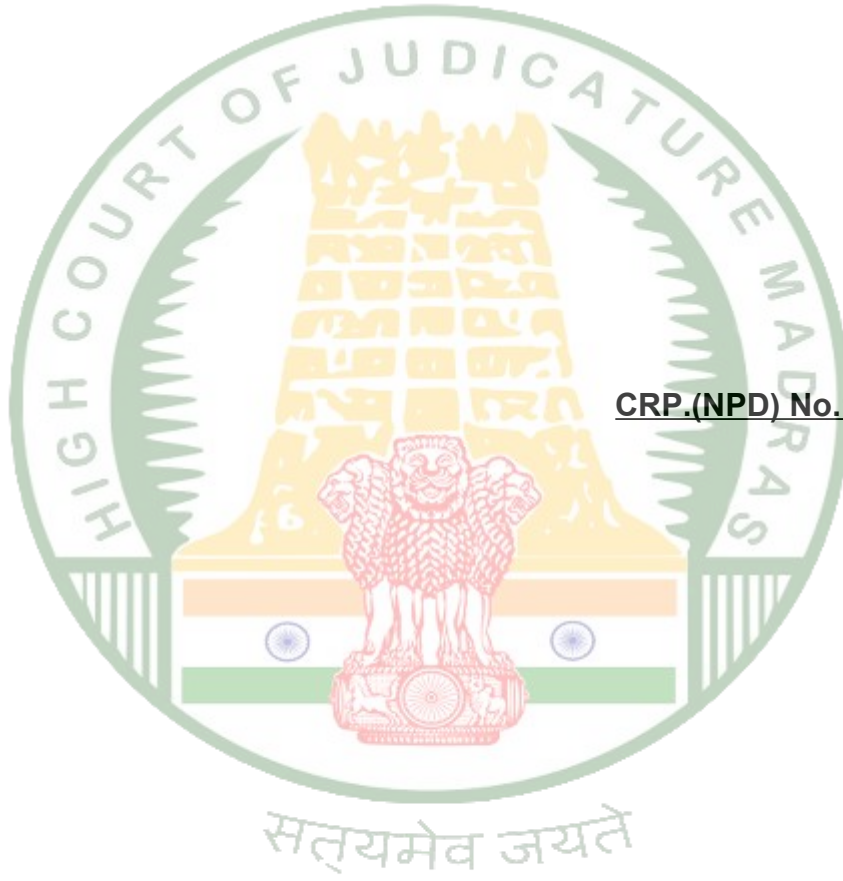
The XIV Assistant Judge,
City Civil Court,
Chennai.



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N.SATHISH KUMAR, J.

VRC



CRP.(NPD) No.1427 of 2011

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