

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.1662 of 2015

and M.P.No.1 of 2015

1.Karuppusamy
2.Selvamani
3.Sarojini

.. Petitioners

vs.

Agilandam

.. Respondents

Prayer.: Civil Revision petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 15.12.2014 made in I.A.No.409 of 2014 in O.S.No.406 of 2012 on the file of II Additional District Munsif Court, Erode.

For Petitioners : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.N.Manokaran

ORDER

The present Civil Revision Petition is directed against fair and decretal order dated the 30.12.2014 passed by the II Additional District Munsif Court, Erode in I.A.No.409 of 2014 in O.S No.406 of 2012.

2. By the impugned order, the said court has dismissed the application filed by the petitioner to set aside order dated 24.09.2014 setting the petitioners ex parte.

3. Pursuant to ex parte dated 24.09.2014, the suit itself was decreed partly in favour of the respondent by a judgment and decree dated 27.01.2015.

4. By the aforesaid judgment and decree, the court has held that the respondent was entitled to one fourth share in the suit schedule property. At the time of hearing of the present civil revision petition, it was mentioned that an appeal had been filed against the said judgment and decree dated 27.01.2015 passed in the above suit, it was not pursued for the after filing of the present Civil Revision Petition.

WEB COPY

5. It was further stated that after filing of the appeal, the Court Registry had returned the appeal papers for compliance. However, it has not been pursued thereafter. Thus, as on date there is no effective appeal against the final decree.

6. Be that as it may, the facts that are relevant for the present Civil Revision Petition is that the respondent had filed the above partition suit claiming half share in the suit schedule property.

7. The respondent is the daughter of one Appachi Gounder through his 1st wife while the petitioners are the children of the said Appachi Gounder through the 3rd wife.

8. In the suit, the petitioners were set ex parte twice which were set aside. Thereafter, they filed their written statement. After chief examination of the respondent as PW.1, the case was adjourned for cross examination. However, on 24.09.2014, the petitioner remained absent and were therefore set ex parte once again.

WEB COPY

9. Under these circumstances, the above mentioned I.A.No.409 of 2014 in O.S No. 406 of 2012 was filed to set aside the order setting the petitioners ex parte.

10. In the impugned order, the court has held that the suit was decreed twice on an earlier occasion and that the petitioners had been negligent in not pursuing their defence by choosing to remain absent on 24.09.2014.

11. Under these circumstances, the court has concluded that no sufficient cause was made out for condoning the delay.

12. Heard the learned counsel for the petitioner and the respondent. Learned counsel for the petitioner submitted that the impugned order passed by the court in disallowing the application was not proper as the petitioners have been denied the right to effectively defend themselves.

13. It was submitted that the application was filed in time and the reasons assigned by the petitioners' ought to have been liberally construed by the court. It was stated that it was incorrect to state that the petitioners were dragging the proceedings particularly in the light of the fact that the petitioners' father had executed a will in their favour.

14. It was further stated that the court erred in proceeding to pass judgment and decree in the above suit recognising the respondents right to the property even though the petitioners' father had executed a will in favour of the petitioner.

15. I have considered the arguments of the learned counsel for the petitioner and the respondent. The suit has been decreed on 27.01.2015 after the impugned order came to be passed on 15.12.2014. Therefore, no relief can be granted in the present Civil Revision Petition . In any event, the Court has recognised 1/4th share in the suit schedule property in favour of the respondent/plaintiff though the respondent/plaintiff had prayed for 1/2 share. The petitioners have to pursue with their appellate remedy.

16. Accordingly, the present Civil Revision Petition is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

WEB COPY

08.07.2019

Index :Yes/No

Internet :Yes/No

kkd

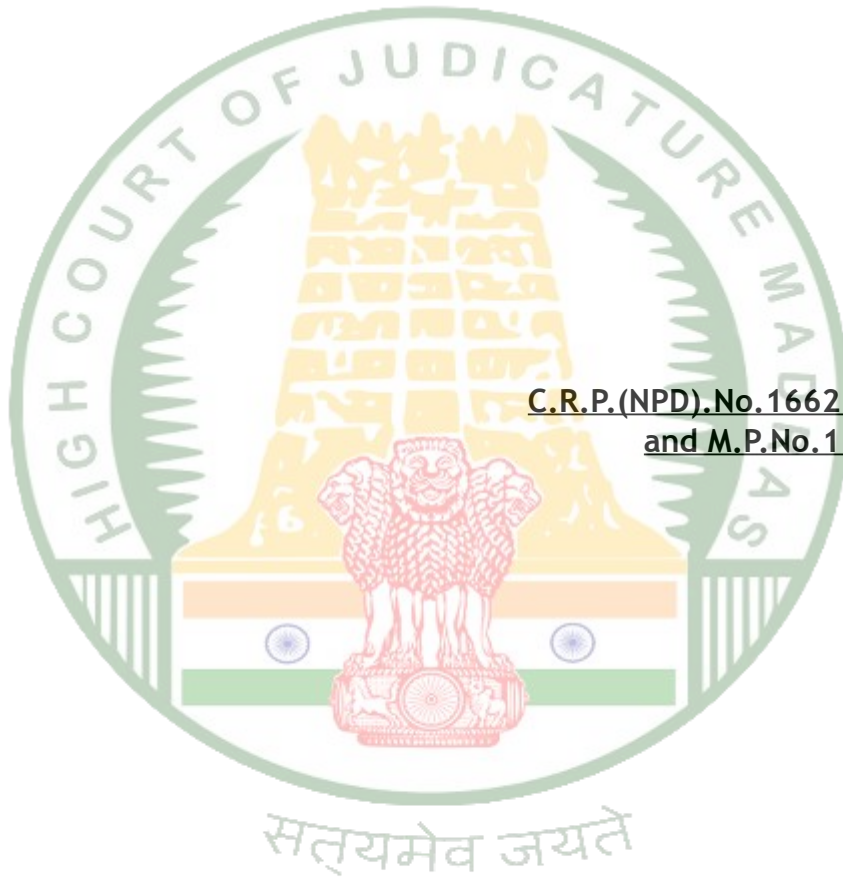
To

II Additional District Munsif Court,

Erode.

C.SARAVANAN,J.

kkd



C.R.P.(NPD).No.1662 of 2015
and M.P.No.1 of 2015

WEB COPY

08.07.2019