

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.R.P(NPD)No.3575 of 2012

and

M.P.No.1 of 2012

Ravi

...Petitioner

Versus

1.Mohan (Deceased)

2.Mrs.Santhi

3.Arul

4.Arivazhagan

(Respondents 2 to 4 were brought on record as legal representatives of the deceased sole respondent vide order of this Court dated 13.08.2014 made in M.P.No.3 of 2013 in C.R.P(NPD)No.3575 of 2012.)

...Respondents

This Civil Revision Petition is filed under Section 115 of C.P.C praying to set aside the order and decree dated 03.08.2011 made in I.A.No.1198 of 2010 in O.S.No.270 of 2006 on the file of the learned District Munsif, Ponneri.

For Petitioner : Mr.K.Venkatasubba Raju

For Respondent - 1 : Died

Respondents - 2,
3 & 4 : Mr.D.Gopinathan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed by the learned District Munsif, Ponneri in I.A.No.1198 of 2010 in O.S.No.270 of 2006 dated 03.08.2011, in and by which, the Interlocutory Application filed by the petitioner herein for condoning the delay of 835 days in filing the said Application was dismissed by the learned District Munsif.

2. The brief facts of the case are as follows:

The suit in O.S.No.270 of 2006 has been originally filed for delivery of vacant possession. It has been filed on the ground that the plaintiff is the owner of the property and the same has been decreed ex-parte on 20.01.2007. Thereafter, the revision petitioner has filed an Interlocutory Application in I.A.No.1198 of 2010 before the District Munsif Court, Ponneri. In the affidavit filed in support of the said Application, the petitioner contended that he has not received any notice or summons in respect of the suit and he did not know about the initiation of the suit

proceedings against him, only on 12.05.2009, when he received notice from the respondent through his counsel, he came to know that the suit has been filed against him and also about the setting of ex-parte decree on 20.01.2007. Immediately, the petitioner filed I.A.No.1198 of 2010 for the following reliefs:

- (a) to set aside the exparte decree passed on 20.01.2007.
- (b) to condone the delay of 835 days in filing the Application to set aside the exparte decree.
- (c) to stay the operation of the decree passed in the suit O.S.No.270 of 2006 by decree dated 20.01.2007 till the disposal of the Applications filed for condoning the delay and also setting aside the ex-parte decree.

3. The learned District Munsif, Ponneri dismissed the said Interlocutory Application on the ground that the reasons stated by the petitioner in I.A.No.1198 of 2010 is not valid as he has received summons pursuant to the filing of the suit. Aggrieved over the dismissal of I.A.No.1198 of 2010, the petitioner has filed the present Civil Revision Petition.

4.1. When the matter was taken up for hearing on 27.03.2019, the learned counsel appearing for the petitioner submitted that no notice or summon has been served on the defendant/petitioner. In order to verify the same, this Court has called for the records from the trial Court. On perusal of the records, it is clear that the reasons assigned by the petitioner are found to be false and in order to prevent the plaintiff/first respondent from enjoying the benefits of the judgment and decree passed in his favour, the defendant/petitioner has come out with such false allegation stating that no summons were served on him. The trial Court has noted in its records that the suit summons were served on the petitioner and the acknowledgment card was also signed by him. Therefore, all these facts were taken into consideration by the trial Court, and rightly dismissed I.A.No.1198 of 2010. Therefore, this Court unable to accept the contention of the petitioner's counsel that the delay is *bona fide* and it has occurred only due to the non-service of summons on the petitioner.

4.2. Moreover, it is not the case of the petitioner that he is not residing in the same address. It is further seen that the summon was sent to the correct residential address of the petitioner by way of Registered Post and he has received the same and also signed in the acknowledgment card. Therefore, I find no error or infirmity in the order of the learned District Munsif, Ponneri.

5. In the result, this Civil Revision Petition stand dismissed and the order passed by the learned District Munsif, Ponneri in I.A.No.1198 of 2010 in O.S.No.270 of 2006 dated 03.08.2011 is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

12.04.2019

mrr
Index : Yes/No

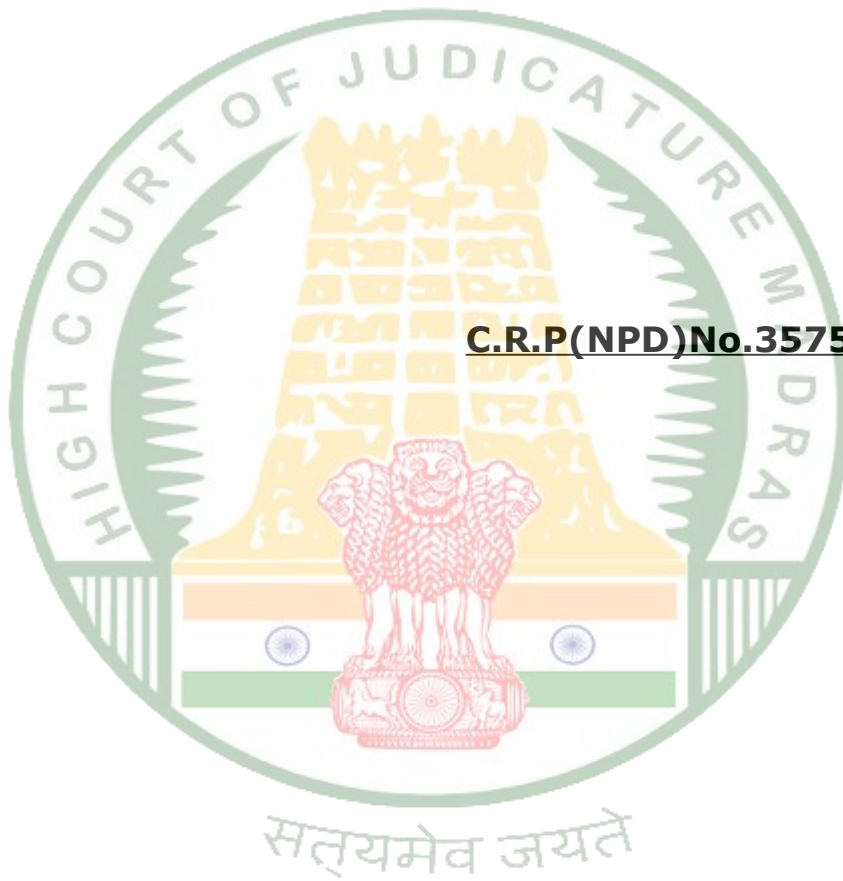
To

The District Munsif Court,
Ponneri.

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N.SATHISH KUMAR, J.,

mrr



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