

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.806 of 2019

&

C.M.P.No.5302 of 2019

Natesan

...Petitioner

Vs

K.Murugaiyan

... Respondent

Prayer: Civil Revision Petition is filed under Order 227 of the Constitution of India against the fair and decreetal order dated 07.04.2018 in I.A.No.57(a) of 2015 in O.S.No.365 of 2013 on the file of the Principal District Munsif, Trichengode.

For Petitioner : Mr.R.Marudhachalamurthy

ORDER

The above Civil Revision Petition is filed challenging the Order passed by the learned Principal District Munsif, Thiruchengode, in I.A.No.57(a) of 2015 in O.S.No.365 of 2013 in

and by which the application filed by the 1st defendant for setting aside the ex parte decree passed against him on 27.03.2014 was set aside and the 1st defendant was permitted to file his written statement.

2.The suit O.S.No.365 of 2013 has been filed by the revision petitioner for a partition and separate possession of his 5/16th share in the suit property and for a permanent injunction. On 27.03.2014, it appears that when the matter was listed for written statement the 1st defendant was set ex parte on account of non-filing of a written statement and thereafter the ex parte decree was passed. On 28.04.2014, the 1st defendant had filed the impugned application for setting aside the ex parte decree in the suit. In the affidavit filed in support of the above he would contend that on 19.03.2014, his counsel had asked him to come to his office for signing a written statement and on the day when he was proceeding to his counsel's office he met with an accident, to prove the same the 1st defendant has filed Ex.B.1

which is the discharge summary from the hospital. It is seen that despite objections being made by the revision petitioner the application was allowed. Challenging the same the revision petitioner/plaintiff is before this Court.

3.Mr.R.Marudhachalamurthy, learned counsel appearing on behalf of the revision petitioner would contend that the written statement which has been filed by the defendant would fairly show that the same has been signed on 19.03.2014 and therefore his statement in his affidavit that he had not signed it on 19.03.2014 is false statement.

4.Heard the counsel and the perused the records. From a perusal of the records it is seen that importance need not to be given to the date which is provided in the written statement as it could be that the counsel had forgotten to erase the date when he received the signature at a later point of time. Even according to the 1st defendant he was going to sign a written statement on

19.03.2014 and he had met with an accident. Consequently, the application has been filed to set aside the ex parte decree, which clearly shows bonafides of the 1st defendant. I find no infirmity in the order passed by the learned Principal District Munsif, Thiruchengode.

The Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

04.03.2019

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Index : Yes/No
Speaking order/non-speaking order

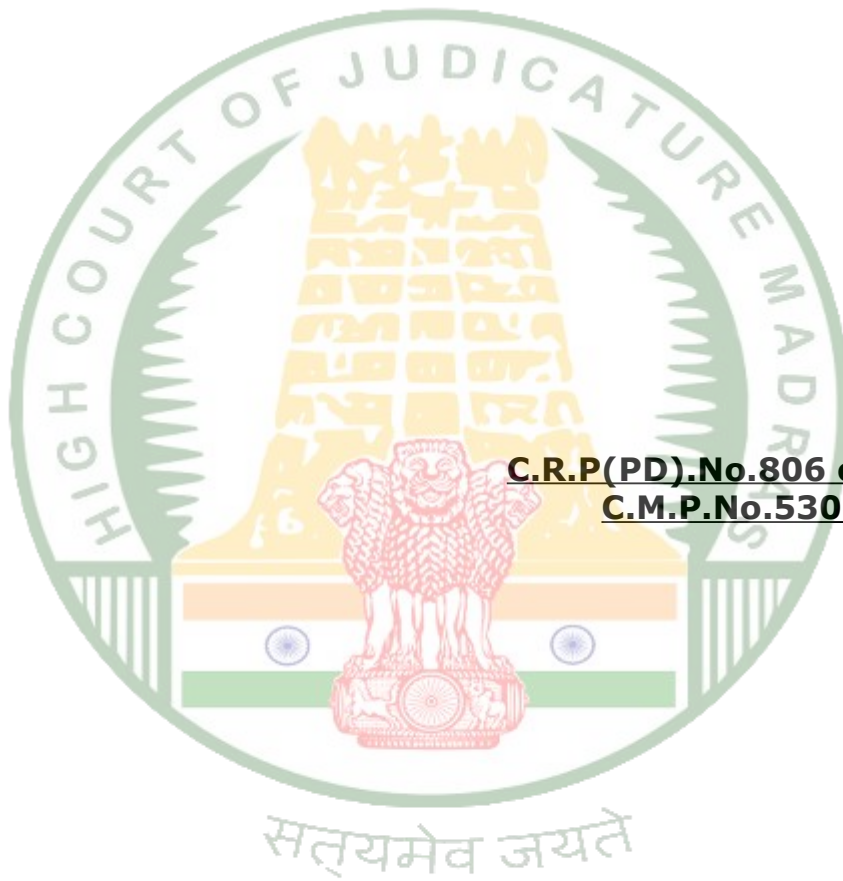
To,

The Principal District Munsif,
Trichengode.

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P.T.ASHA, J.,

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