

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.10.2019

PRONOUNCED ON : 08.11.2019

CORAM

THE HONOURABLE Mr. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4207 of 2012
and M.P.No.1 of 2012

Kuppusamy

... Petitioner

Vs.

1. Suresh
2. Kumaravel

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and final order dated 29.08.2012, passed in I.A.No.372 of 2012 in O.S.No.64 of 2004, on the file of the District Munsif Court, Harur.

For Petitioner : Mr.K.Krishnan
For Mr.A.Sivaji

For Respondents : Mr.S.Kanniah

ORDER

Aggrieved over the judgment and decree dated 29.08.2012, passed in I.A.No.372 of 2012 in O.S.No.64 of 2004, on the file of the District Munsif Court, Harur, the petitioner, who is the fifth defendant in the above referred suit, filed this Civil Revision Petition and prayed to set aside the order dated 29.08.2012, passed in I.A.No.372 of 2012,

which is filed to condone the delay of 1860 days in filing the application to set aside the exparte decree.

2. Before the trial Court, the respondents 1 & 2, in this revision petition, have filed a suit in O.S.No.64 of 2004, as against the petitioner and others for the relief of partition and separate possession of the suit schedule property. When the case was posted for trial, the petitioner and other defendants in the suit had not appeared before the trial Court. Hence, on 06.02.2007, the learned District Munsif, Harur, passed an order of ex-parte as against the petitioner and other defendants. Thereafter, after the lapse of 1860 days, the petitioner herein filed an application under Section 5 of Limitation Act, in I.A.No.372 of 2012, before the learned District Munsif, Harur, to condone the delay in filing the application to set aside the exparte decree dated 06.02.2007.

3. In the affidavit, filed in support of the petition filed under Section 5 of Limitation Act, the petitioner has stated that no notice was served in respect of the suit filed by the respondents. The petitioner further stated that on 11.07.2004, at about 4.00 p.m., near Harur

roundana, the respondents and their sons brutally attacked him with deadly weapons and therefore, the petitioner was admitted in the Harur Government Hospital and thereafter shifted to Dharmapuri Government Hospital, for which, a case has been registered as against the respondents and others in Crime No.566 of 2004 for the offences under Sections 323, 324 r/w 560(ii) of IPC. From the date on which the case was registered, the petitioner apprehended the attitude of respondents and left the village for three years. Only on 02.02.2012, the petitioner gained the knowledge about the details of exparte decree. Immediately, he filed the application to set aside the exparte decree with the delay of 1860 days.

4. Resisting the claim made by the petitioner, the second respondent in this Civil Revision Petition filed a counter, in which, he has stated that in the suit pertains to this revision petition, after receiving summons, the defendants 1 to 7, including the petitioner engaged one Advocate viz., M.Mahadevan. Thereafter, since the written statement had not been filed between the period of 29.03.2004 and 06.02.2007, the exparte decree was passed as against the petitioner and other defendants. The second respondent further stated that the

alleged occurrence stated by the petitioner on 11.07.2004, had not been happened. In one another suit filed by the respondents in O.S.No.27 of 1987, the petitioner has regularly appeared and proceeded the case for the past 25 years. Further against this petitioner, the respondents filed execution applications, in which, the petitioner had filed his counter. Without any specific incident, the petitioner filed the false affidavit and thereby the petition filed by the petitioner is liable to be dismissed.

5. The learned District Munsif, Harur, after affording opportunities to the respondents and having considered all the documents, by an order dated 29.08.2012, dismissed the said application filed by the petitioner, by stating that the petitioner has not produced any relevant documents to show that he was treated in the government hospital. Further observed that there was an allegation against the respondents that they were attacked the petitioner and caused injury and in order to prove the same, the copy of the First Information Report registered against the respondents had not been produced and accordingly, dismissed the application filed by the petitioner. Challenging the said findings, the petitioner is before this

Court.

6. Today, when this petitioner is taken up for hearing, the learned counsel appearing for the petitioner is present and filed an additional type set of papers, in which, he enclosed a copy of the First Information Report, as document No.5, which was registered based on the complaint given by the petitioner, as against the respondents and others. Now on going through the First Information Report, on 11.07.2004 the respondents in this revision petition by using deadly weapon attacked the petitioner. So the said document reveals the fact that on 11.07.2004, the respondents were attacked the petitioner as alleged in the affidavit. However, after completing the investigation, the charge sheet has been laid in the year 2009. Therefore, the said incident may be one of the reasons for non-filing of the petition to set aside the exparte decree immediately, after passing the exparte decree.

7. The another contention raised by the learned counsel appearing for the petitioner is that the petitioner has not received any notice in respect of the suit filed by the respondents in O.S.No.64 of

2004. On the other hand, the learned counsel appearing for the respondents contended that the petitioner and other defendants, after receiving the notice, they appeared before the trial Court by engaging one Advocate M.Mahadevan. In this regard, in order to prove the stand taken by the respondents, they have not produced any copy of the Vakalath filed by the petitioner or other defendants before the Court below.

8. In the additional type set of papers filed by the learned counsel appearing for the petitioner, the notes paper maintained in O.S.No.64 of 2004 have been enclosed as document No.15. As per the entires made in the notes paper maintained in O.S.No.64 of 2004, the petitioner/fifth defendant has not served with notice for the hearing dated 29.03.2004. However one Mr.MMD filed Vakalath for D1 to D7 on the same day. In the notes paper, it was also mentioned as "C/s. for D5 absent and affixed". The said circumstances, created a doubt whether the petitioner/fifth defendant had given his vakalath for the hearing dated 29.03.2004. To find out the correct picture, seeing the Vakalath filed by the said M.Mahadevan, Advocate, is very much necessary. But in this case, the respondents have not taken any stpes

to file copy of the Valakath filed by the said Advocate M.Mahadevan dated 29.03.2004. Hence, the said circumstances create doubt whether the petitioner entered appearance before the trial Court on 29.03.2004 or not. Apart from that, though the preliminary exparte decree has been passed on 06.02.2007, till passing this impugned order, the respondents herein have not filed any application for passing final decree.

9. More than that, it is not in dispute that the petitioner and the defendants are family members. They are having so many litigations in respect of the properties owned by one Mariyappan. Since the suit is filed for the relief of partition and separate possession, determination of right in the suit property having by the litigants is very much necessary. In this connection, it is necessary to see the judgment reported in **(2019) 7 SCC 359** in the case of **Robin Thapa Vs. Rohit Dora**, wherein our Hon'ble Apex Court has held as follows :-

"Ordinarily litigation is based on adjudication on merits of contentions of parties. Litigation should not be terminated by default, either of plaintiff or defendant. Cause of justice requires that as far as possible, adjudication be done on merits."

10. So applying the above principles with the case in our hands, it is true that if the order passed by the learned District Munsif, Harur, is confirmed, the right of the petitioner will be defeated. Therefore for establishing the right of the petitioner elaborate trial is necessary. Hence for the reasons stated above, I am of the opinion that the order passed by the learned District Munsif, Harur, dated 29.08.2012, in I.A.No.372 of 2012 is liable to set aside.

11. Now on going through the other circumstances found in this revision petition, it appears that the suit pertains to this case filed in the year 2004 and hence it is appropriate to give some directions to the learned District Munsif, Harur, to dispose the matter in a time frame manner. Accordingly, the learned District Munsif, Harur is directed to post the suit in day-to-day basis and dispose the same as earlier as possible, preferably within a period of three months from the date of the receipt of a copy of this Order.

12. With the above directions, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

08.11.2019

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

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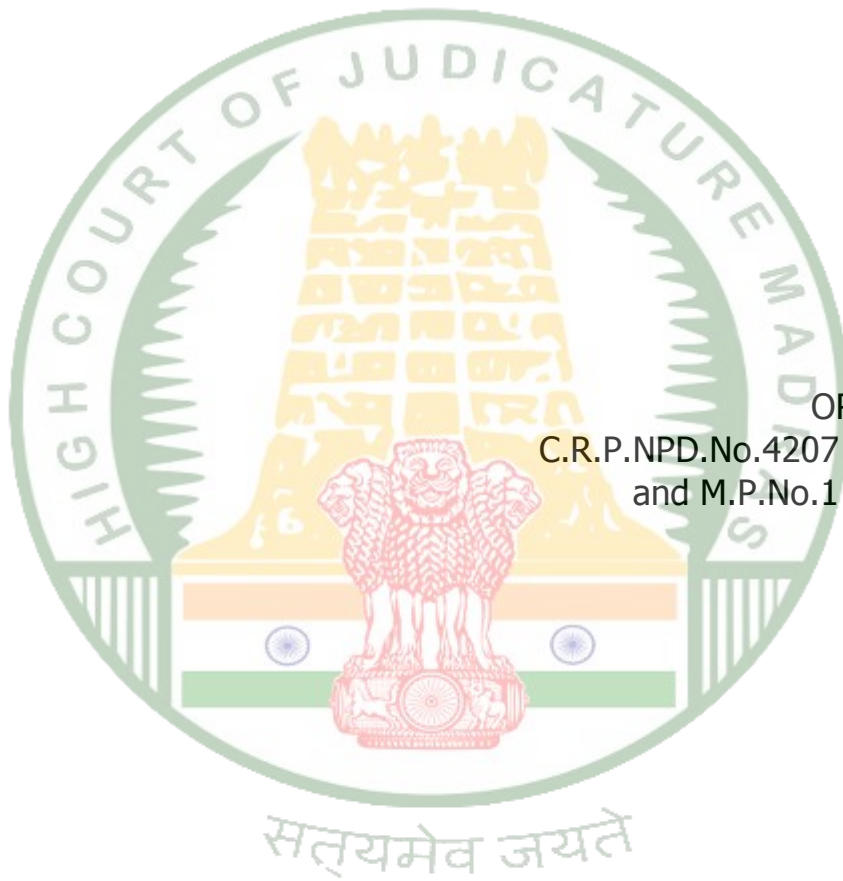
To

The District Munsif Court,
Harur.



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R.PONGIAPPAN, J
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ORDER IN
C.R.P.NPD.No.4207 of 2012
and M.P.No.1 of 2012

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