

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).Nos.3100 & 3101 of 2015
and
M.P.Nos.1 & 1 of 2015

C.R.P.(PD).No.3100 of 2015

K.Velmurugan

... Petitioner

vs.

1.Palanivel

2.Vasanthi

3.Sakthivel

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 17.04.2015 passed in I.A.No.935 of 2014 in I.A.No.291 of 2014 in O.S.No.103 of 2014 on the file of the Principal District Munsif of Tiruchengode.

For Petitioner

: M/s.Elizabeth Ravi for
Mr.P.Raja

For Respondents

: Mr.T.Dhanya Kumar

C.R.P.(PD).No.3101 of 2015

K.Periyakkal

... Petitioner

vs.

Palanivel

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 17.04.2015 passed in I.A.No.936 of 2014 in I.A.No.290 of 2014 in O.S.No.101 of 2014 on the file of the Principal District Munsif of Tiruchengode.

For Petitioner : M/s.Elizabeth Ravi for
Mr.P.Raja

For Respondent : Mr.T.Dhanya Kumar

COMMON ORDER

By this common order both Civil Revision Petitions are being disposed.

2.In these Civil Revision Petitions the respective petitioners have challenged orders passed by the Principal District Munsif Court, Tiruchengode in I.A.No.935 of 2014 in I.A.No.291 of 2014 in O.S.No.103 of 2014 and in I.A.No.936 of 2014 in I.A.No.290 of 2014 in O.S.No.101 of 2014.

3.The petitioner in C.R.P.(PD).No.3100 of 2015 is the plaintiff in O.S.No.103 of 2014. The said suit was filed for permanent injunction to restrain the respondents from interfering with the peaceful possession and enjoyment of the suit schedule property. The said suit was originally filed O.S.No.56 of 2010 before the Principal District Munsif Court, Rasipuram and was latter transferred to the Principal District Munsif Court, Tiruchencode and renumbered as O.S.No.103 of 2014.

4.The petitioner in C.R.P.(PD).No.3101 of 2015 is the 1st defendant in O.S.No.101 of 2014 filed by the respondent. The said suit was filed to partition the suit schedule properties. The said suit was originally filed O.S.No.163 of 2010 before the Principal District Munsif Court, Rasipuram and was latter transferred to the Principal District Munsif Court, Tiruchencode and renumbered as O.S.No.101 of 2014.

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5.In these respective suits, the respective petitioners filed I.A.Nos.290 & 291 of 2014 under Section 151 of CPC, to reopen the case for adducing oral evidence on the side of respective petitioner after the these suits were reserved for judgment.

6.The Court had adjourned the I.A.No.290 of 2014 in O.S.No.101 of 2014 and further ordered that the petition will be allowed provided I.A.No.291 of 2014 in O.S.No.103 of 2014 is allowed.

7.By an order dated 11.09.2014 I.A.No.291 of 2014 in O.S.No.103 was allowed. The petitioner in C.R.P.(PD).No.3100 of 2015 was directed to file a list of witness to be examined on his side on the next day of hearing on 22.09.2014.

8.Since, the I.A.No.291 of 2014 in O.S.No.103 of 2014 (arising subject matter in C.R.P.(PD).No.3100 of 2015) was allowed and ordered I.A.No.290 of 2014 in O.S.No.101 of 2014 (arising subject matter of C.R.P.(PD).No.3101 of 2015) was to be allowed in terms of order dated 11.09.2014 in I.A.No.291 of 2014.

9.However, on 22.09.2014, the respective petitioners remained absent. Therefore, I.A.Nos.290 & 291 of 2014 were dismissed.

10. Under these circumstances, both the respective petitioner filed I.A.No.935 of 2014 in I.A.No.291 of 2014 in O.S.No.103 of 2014 and I.A.No.936 of 2014 in I.A.No.290 of 2014 in O.S.No.101 of 2014 to restore the respective I.As.

11. The affidavits filed in support of I.A.No.935 & 936 of 2014 by the respective petitioners are identical that they were suffered from viral fever and they were unable to attend the court on 22.09.2014 and therefore these I.A.Nos.291 & 290 of 2014 in the respective suits were dismissed in their absence.

12. By two separate orders, the court has found that the fault with the respective petitioners stating neither of the respective petitioners have given proper evidence in support of their illness nor they were unable to attend the court on that day and their claim that their counsel also could not attend the court due to boycott of Court by advocates on 22.09.2014 was not correct as cases were taken up as usual in the Court on the said date.

13.The court has further observed that since the petitioner in I.A.No.291 of 2014 had not complied with the condition in I.A.No.291 of 2014, these two I.As were liable to be dismissed. The Court has further observed that it cannot be considered that the petitions were dismissed for default in payment of batta and as such invocation of Order 9 Rule 9 of CPC was not available to the petitioner.

14.The court has also observed that the petitions reveal that the respective petitioners were not following the case diligently and that is why they were not able to state under what circumstance the orders came to be passed by the court in the I.A.No.291 of 2014 and I.A.No.290 of 2014 and the real reason for their dismissal.

15.Though the reasons given in the respective affidavits filed in support of I.A.Nos.935 & 936 of 2014 by the respective petitioner read identically, it is clear they were not diligent and therefore the court has founded sufficient reason for dismissing the respective I.A.s.

16.However, since the O.S.No.101 of 2014 arose out of a partition suit between the parties and the O.S.No.103 of 2014 was filed for a permanent injunction. I am of the view that the parties may be given one last chance to establish their case.

17.Therefore, to meet the ends of justice both the Civil Revision Petitions are allowed on term as the respective petitioners were not diligent and have inconvenienced the respondents and the Court.

18.Respective petitioner shall therefore pay a sum of Rs.10,000/- each in the respective suits as cost to the respondent by depositing the said amount to the credit of the respective suits within a period of two weeks from date of receipt of a copy of this order.

19.If there is compliance within such time, the order passed in I.A.Nos.291 & 290 of 2014 shall stand restored and the order passed in I.A.Nos.935 & 936 of 2014 shall stand set aside with consequential relief. On such deposit, the respondents shall be entitled for payment out.

20.The petitioner shall file a list of witness as ordered in I.A.No.291 of 2014 within a period of two weeks from the date of receipt of a copy of this order.

21.The learned Principal District Munsif, Tiruchendur shall thereafter proceed to dispose the O.S.No.103 of 2014 and O.S.No.101 of 2014 within a period of six months from the date of receipt of a copy of this order. In case, there is no compliance by the respective petitioner, the benefit of this order shall stand revoked without further orders.

22.The present Civil Revision Petitions are allowed with the above observations. Connected Miscellaneous Petitions are closed.

23.07.2019

Index:Yes/No
Internet:Yes/No
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To

1.The Principal District Munsif Court,
Tiruchengode.

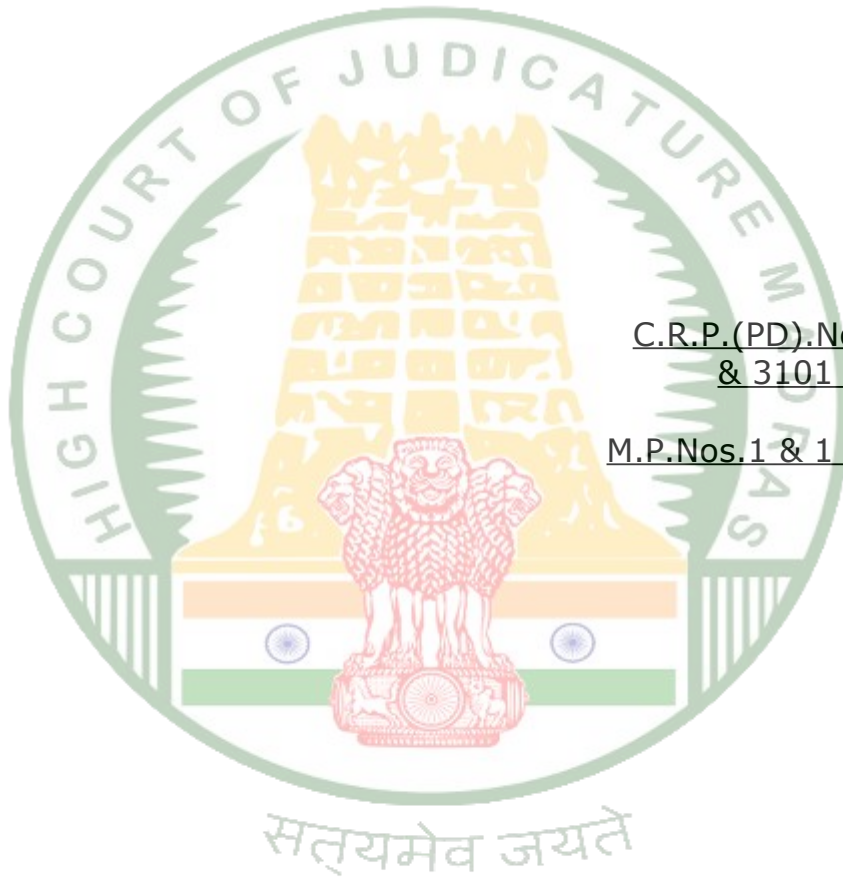
2.The Section Officer, V.R.Section,
High Court,
Madras.



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C.SARAVANAN.J.,

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C.R.P.(PD).Nos.3100
& 3101 of 2015
and
M.P.Nos.1 & 1 of 2015

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