

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.3800 of 2013

M.P.No.1 of 2013

Salahuddin

.... Petitioner

Vs

1. S.M.Salahuddin

2. Munirabanu

Represented by Power
agent Abdul Rahman

.... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.06.2013 made in I.A.No.244 of 2013 in O.S.No.151 of 2013, on the file of the Principal District Munsif Court at Mayiladuthurai.

For Petitioner : Mr. S.Senthil Nathan

For Respondents : Mr.S.Sounthar

ORDER

Aggrieved over the order dated 21.06.2013, passed in I.A.No.244 of 2013 in O.S.No.151 of 2012 on the file of the Principal District Munsif Court, Mayiladuthurai, the petitioner, who is the defendant in the above referred suit, has filed this Civil Revision Petition.

2. Before the trial Court, the respondents 1 & 2 in this revision petition

have filed the above referred suit as against the present petitioner and sought for the relief of injunction restraining the petitioner/defendant in interfering with the respondents'/plaintiffs' peaceful possession and enjoyment of the suit property.

3. During the pendency of the said suit, the respondents have filed an application in I.A.No.244 of 2013, under Order 3 Rules 1 & 2 of C.P.C., to recognize one Abdul Rahman as their power agent. The learned Principal District Munsif, Mayiladuthurai, after giving notice to the petitioner, on 21.06.2013, for the reason that the petitioner had not filed any counter, allowed the said application filed by the respondents/ plaintiffs and recognised the said Abdul Rahman as the power agent of the plaintiffs. Aggrieved over the said findings, the petitioner is before this Court with the prayer to set aside the order dated 21.06.2013, passed by the learned Principal District Munsif, Mayiladuthurai.

4. The learned counsel appearing for the petitioner would contend that before the trial court, the learned counsel appearing for the respondents/ plaintiffs instead of giving notice to the learned counsel who appeared on behalf of the petitioner/defendant on record, served notice to one D.Amirtharaj, who is not the counsel for the petitioner. Only because of the said reason, the objection of the petitioner has not been filed in proper time.

In the said circumstances, the petitioner has approached this Court under Article 227 of Constitution of India to correct the irregularity committed by the learned Principal District Munsif, Mayiladuthurai.

5. In this aspect, the learned counsel appearing for the respondents would contend that even though it was contended that the notice was served to another counsel, in order to prove the same, the petitioner did not produce any relevant documents i.e., for example Vakalath, which is the document to show that who is on record. Therefore, the above said contention is not at all maintainable.

6. The arguments advanced by the learned counsel on either side are considered.

7. Now on going through the impugned order dated 21.06.2013, it appears that the learned Principal District Munsif, Mayiladuthurai, only after passing an order of ex parte as against the petitioner/defendant, has allowed the application filed by the respondents/plaintiffs and recognised one Abdul Rahman as their power agent. In this said circumstances, it is relevant to see Order 9 Rule 13 of C.P.C, which reads as follows :-

"13. Setting aside decree ex parte against

defendant

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:"

From the above said provision, it is clear that the petitioner herein is having option to file an application to set aside the exparte order before the trial Court itself. But instead of filing an application before the trial Court, the petitioner has approached this Court under Article 227 of Constitution of India, which is unnecessary. In application under Order 9 Rule 13 of C.P.C., setting aside the exparte order is a statutory remedy.

8. In the said circumstances, since the allegations made by the petitioner are as against the practising advocate before the trial Court, the same have to be decided only by the trial Court, who passed the said order.

As per the submission made by the learned counsel appearing on either side, as of now, the suit is posted for cross examination of P.W.1. Therefore, I am of the opinion that giving liberty to the petitioner to file application to set aside the exparte order before the trial is a proper relief to the petitioner.

9. Accordingly, it is open to the petitioner to present application before the trial Court for the relief of setting aside the exparte order dated 21.06.2012, within a month from the date of the receipt of a copy of this Order. The learned Principal District Munsif, Mayiladuthurai is directed to dispose of the same within a month from the date of filing of the said application.

10. With the above directions, this Civil Revision Petition is dispose of. Consequently, connected miscellaneous petition is closed. No costs.

19.09.2019

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

rts

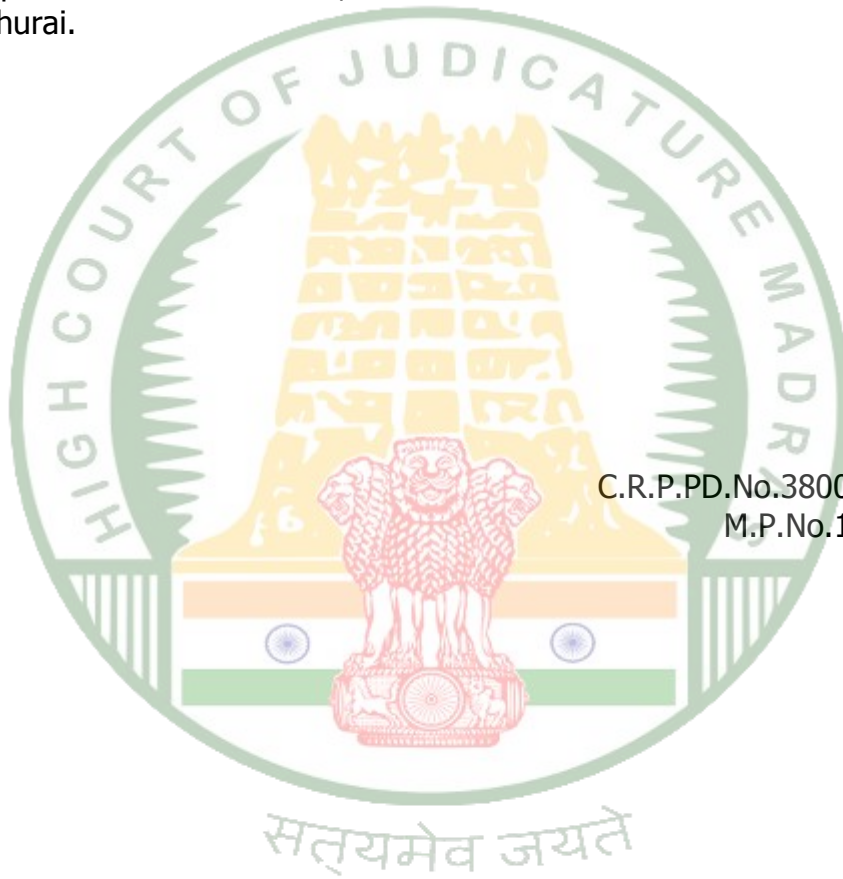
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R.PONGIAPPAN, J.

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To

The Principal District Munsif Court,
Mayiladuthurai.



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