

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(NPD)No.487of 2016

and

CMP.No.2506 of 2016

1. R. Raju

2. A. P. Selvaraj

..Petitioners

Vs

1.A. K. Shanmugasundaram

2. A. K. Seenivasan

Respondents

PRAYER: Civil Revision Petition filed under section 115 of the Civil Procedure Code to set aside the order dated 22.12.2015 made in C.M.A.No.6 of 2015 on the file of the III Additional District and Sessions Judge, Gobichettipalayam confirming the order dated 09.06.2015 made in I.A.No.364 of 2014 in O.S.No.127 of 2012 on the file of the Subordinate Judge, Gobichettipalayam.

For Petitioners : Mr. A.V. Arun

For Respondents : Mr. Balasubramanian for R1 and R2

ORDER

The above Civil Revision Petition is filed challenging the dismissal of an application filed by the defendants 6 and 7 to set aside the ex parte decree dated 22.12.2015 made in CMA.No.6 of

2015 on the file of the III Additional District and Sessions Judge, Gobichettipalayam, confirming the order dated 9.6.2015 passed against them in I.A.No.364 of 2014 in O.S.No.127 of 2012 on the file of the Subordinate Judge, Gobichettipalayam.

2. The case of the petitioners was that the second petitioner was suffering from viral fever and was bedridden and therefore unable to appear before the Court or instruct the counsel. On account of their absence, they were set ex parte on 08.04.2004 and ex parte decree was therefore passed on 15.04.2014. It was only after recovering from the illness that the second petitioner could contact his counsel and came to know that he had been set ex parte for his absence, immediately, the application has been moved. The said petition was objected by the plaintiffs who contended that the defendants were trying to drag on the proceedings. The matter had been adjourned for 12 hearings which was for the cross examination of PW1 . Ultimately, the Application was dismissed. The said order was taken up on Appeal in CMA.No.6 of 2015 by defendants 6 and 7 before the III Additional District and Sessions Court, Gobichettipalayam. However, the learned District Judge dismissed the Appeal and confirmed the order. Challenging the said order, the revision petitioners are before this Court.

3. Heard the counsel on either side.

4. It is seen that the suit is for partition and ex parte decree was passed on 15.04.2014 and it is further seen that the Application for setting aside the ex parte decree has been moved immediately. The Court below could have allowed the same by putting the defendants on terms and by dismissing the said application unnecessarily proceedings have been dragged on for over five (5) years. This Court is convinced that sufficient cause has been shown for setting aside the ex parte decree. This Court has also taken note of the fact that the defendants have been in the habit of not proceeding with the case. It is made clear that the learned Subordinate Judge, on receipt of the orders from this Court, shall dispose of the suit on or before 30.04.2019. The Civil Revision Petition is allowed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

15.03.2019

Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

mrn

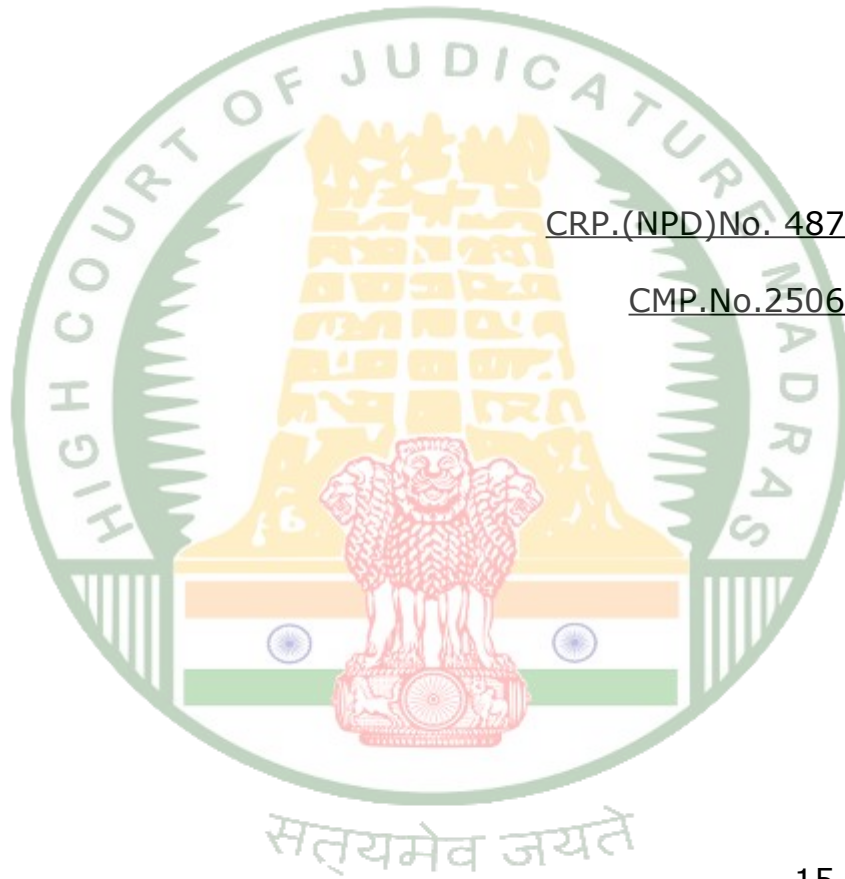
To

1. The III Additional District and Sessions Judge,
Gobichettipalayam

2. Subordinate Judge,
Gobichettipalayam.

P.T.ASHA, J.

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