

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.1517 of 2014

and

M.P. Nos 1 and 2 of 2014

1. Venkata Lakshamma
2. Sampangi
3. Sreenivas
4. Rajanna
5. Ramesh
6. Bhavani
7. R.Narayanappa

... Petitioners

Vs

Venkatesappa

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, against the Order dated 30.09.2013 passed in I.A.No.326 of 2013 in O.S.No.10 of 2007 on the file of the District Munsif Court cum Judicial Magistrate No.I, Hosur.

For Petitioners

: Mr.S. Sivashanmugham

For Respondents

: Mr.Srenik.S.Jain

for Mr.Subba Reddy

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 30.09.2013 passed by the learned District Munisf cum Judicial Magistrate – I, Hosur in I.A. No.326 of 2013 in O.S. No.10 of 2007.

Brief facts leading to the filing of the instant Civil Revision Petition are as follows :-

2. The petitioners are the defendants in the suit in O.S. No.10 of 2007. The suit was filed by the respondent / plaintiff for declaration and for possession of the suit schedule property. All the petitioners were set ex-parte due to the non filing of the written statement, even though they have entered appearance through counsel. The 1,3,4,5 and 6th petitioners / defendants were set ex-parte on 16.02.2007; the 2nd petitioner was set ex-parte on 23.06.2009 and the 7th petitioner was set ex-parte on 17.07.2009. The suit was decreed ex-parte against all the petitioners on 17.07.2009. Thereafter, the 7th petitioner claiming to represent the remaining petitioners filed an application under Section 5 of the Limitation Act to condone the delay of 618 days in filing an application to set aside the ex-parte decree,

dated 17.07.2009. The reasons given in the affidavit filed in support of I.A. No.326 of 2013 in O.S. No.10 of 2007 is that the petitioners had engaged an Advocate by name Nambiraj of Krishnagiri and filed Vakalath in the above suit and also filed the written statement in the suit. It is also stated that their counsel had given the hearing date as 29.01.2009 and they were informed that the stage of the suit was framing of issues. It is stated in the affidavit that their counsel died and thereafter, no date was given to them by the Office Assistant. According to the petitioners on 12.04.2011, they asked for return of the case bundle to engage another Advocate at Hosur and to contest the suit, but it was informed to them by the Office Assistant of Advocate Nambiraj that the case bundle was not traceable. Thereafter, it is their case that they verified the Court records and came to know that the suit was decreed ex-parte against them on 17.07.2009. According to them, immediately on coming to know about the ex-parte decree, they filed an application viz. I.A. No.326 of 2013 in O.S. No.10 of 2007 to condone the delay of 618 days in filing an application under Order 9 Rule 13 CPC to set aside the ex-parte decree passed against them on 17.07.2009.

3. A counter was also filed by the respondent / plaintiff denying the statements made by the petitioners in the affidavit filed in support of I.A. No.326 of 2013. It is also stated in the counter affidavit that the petitioners / defendants have already delivered possession of the suit schedule property to the respondent /plaintiff, even on the date of ex-parte decree. Therefore, the petitioners have no title of possession over the suit schedule property. It is their case that the Execution Petition was also filed by the petitioners / defendants. The Trial Court by its order, dated 30.09.2013 in I.A. No.326 of 2013 in O.S. No.10 of 2007 dismissed the said application on the ground that the petitioners 1, 3,4, 5 and 6 were already set ex-parte on 16.02.2007 and the 2nd petitioner was set ex-parte on 23.06.2009 in the suit. The 7th petitioner was alone set ex-parte on 17.07.2009 when the ex-parte decree came to be passed against all the petitioners / defendants. As seen from the affidavit, there is an enormous delay of 618 days in filing an application to set aside the ex-parte decree, dated 17.07.2009.

4. The Trial Court, after referring to the above observations, regarding the dates on which the respective petitioners / defendants were set ex-parte, has rightly observed that no sufficient reasons have been given by the petitioners to set aside the ex-parte decree,

dated 30.09.2013. Further as seen from the impugned order, the application has been filed by the 7th petitioner claiming to represent the remaining petitioners / defendants as well, even though the remaining petitioners were set ex-parte much earlier to the date on which the 7th petitioner was set ex-parte on 17.07.2009.

5. It is also now submitted by the learned counsel for the respondent, on instructions that the possession has been delivered by the petitioners / defendants to the respondent/plaintiff and both of them have put a separate compound walls over their respective properties and there is no dispute whatsoever between them as on date.

6. For the aforesaid reasons, this Court does not find any infirmity in the impugned order passed by the Trial Court. Accordingly, there is no merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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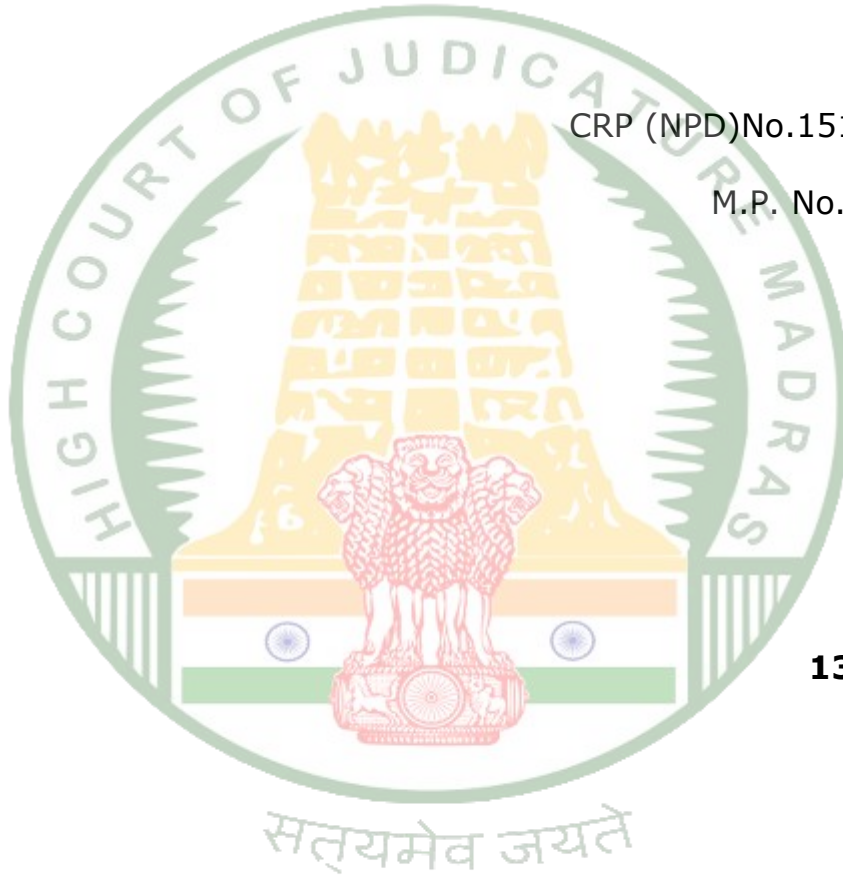
Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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ABDUL QUDDHOSE, J.

vsi2

To
The District Munsif Court cum Judicial Magistrate No.I,
Hosur.

CRP (NPD)No.1517 of 2014
and
M.P. No.2 of 2014



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