

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2019

PRONOUNCED ON : 04.06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.2167 of 2014
AND M.P.NO.1 of 2014

S.Sampath Kumar

... Petitioner

vs.

1.Sundarambal

2.The District Collector,
Vellore District,
Sathuvachari.

3.The Tahsildar,
Katpadi,
Vellore District.

... Respondents

PRAYER: Civil Revision petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 27.03.2014 made in C.M.A.No.4 of 2012 in I.A.No.794 of 2011 in I.A.No.531 of 2011 in O.S.No.924 of 2009 on the file of Sub Court, Vellore.

For Petitioner : Mr. J.Harikrishna
For Respondents : No appearance

ORDER

The present Civil Revision Petition has been filed against the fair and decretal order dated 27.03.2014 in C.M.A.No.4 of 2012 in I.A.No.794 of 2011 in

I.A.No.531 of 2011 in O.S.No.924 of 2009 passed by the learned Sub Judge, Vellore.

2. By the impugned order Appeal filed by the 1st respondent-plaintiff vide C.M.A.No.4 of 2012 has been allowed by setting aside the orders dated 12.01.2012 in I.A.No.794 of 2011 and I.A.No.531 of 2011.

3. The above suit was filed by the 1st respondent herein against the 2nd and the 3rd respondent herein. The said suit was filed for a direction to direct the 2nd and the 3rd respondent herein to issue patta in the name of the 1st respondent for the schedule property and for a consequential relief.

4. Meanwhile, I.A No.106 of 2011 was filed for certain amendments . It was allowed and the case was posted for carrying out amendment. However, since the amendment was not carried out by the 1st respondent, the 1st respondent was called absent on 16.06.2011 and the suit was dismissed for default without cost. On the said date, the petitioner was also absent.

5. Under these circumstances, the 1st respondent filed I.A No.531 of 2011 for restoration of the suit under Order IX Rule 9 of the Civil Procedure Code. On 24.08.2011 the said application was also dismissed as notice of

hearing was not served on the 1st and the 2nd respondent. The petitioner was also called absent.

6. Under these circumstances, yet another application vide I.A.No.794 of 2011 was filed by the 1st respondent to set aside order dated 24.08.2011 in I.A.No.531 of 2011 and to restore the suit to the file of the court for fresh disposal on merits.

7. In the said proceeding, the petitioner submitted that the said application may be allowed on terms on payment of costs. Accordingly a sum of Rs.300/- was ordered to be paid. However, the 1st respondent failed to pay the cost and therefore on 12.01.2012 the said application was also dismissed for non-compliance.

8. Thereafter, the 1st respondent filed Civil Miscellaneous Appeal vide CMA No.4 of 2012 against the fair and decretal order dated 12.01.2012 in I.A. No.531 of 2011 in I.A No.794 of 2011 in O.S.No.924 of 2009 and to set aside the order of the lower court made in the above said I.A.

9. By an order dated 24.03.2014, Subordinate Court at Vellore has allowed the appeal. Aggrieved by the same, the petitioner has preferred the present civil revision petition.

10. It is the contention of the petitioner that the Sub-court exceeded its limits by granting the relief in I.A.No.531 of 2011 when indeed the prayer could be confined only to set aside the order dated 12.01.2012 in I.A.No.794 of 2011 and therefore prayed that the order be set aside. It is submitted that I.A No.794 of 2011 was filed only to set aside the order made in I.A No.531 of 2011.

11. It was submitted that Instead of confining relief to order passed in in I.A.No.794 of 2011, the Sub Court has granted relief to the 1st respondent in I.A.No.531 of 2011 which was procedurally impermissible.

12. In this connection, the learned counsel for the petitioner drew my attention to para 7 of the grounds of appeal before the Sub-Court in C.M.A.No. 4 of 2012 which reads as under:-

“ 7. It is therefore prayed that this Hon'ble Court may be pleased to allow the Civil Miscellaneous Appeal for the

abovesaid reasons setting aside the order of lower Court dated 12.01.2012 in I.A.No.531 of 2011 in I.A.No.794 of 2011 in O.S.No.924 of 2009 in the above case and pass further orders.”

13. I have considered the rival submissions of the learned counsel for the petitioner.

14. I.A.No 531 of 2011 was filed to set aside exparte judgment and decree dated 16.06.2011. However, it was dismissed as the 1st respondent had failed to comply with the notice. Therefore, I.A.No.794 of 2011 was filed to restore I.A.No 531 of 2011. This was also dismissed for non-compliance. On further appeal, the Sub Court has granted relief asked in I.A.No.531 of 2011. Thus, the Sub Court has exceeded the limit and overstepped its jurisdiction in granting the relief which was not asked for.

15. These applications restorations are to be allowed as they have occasioned on account of the failure to comply with the orders of the Court. The Sub Court should have granted relief by setting aside order in I.A.No.794 of 2011 alone. However no prejudice would be caused to the petitioner by the impugned order is sustained.

16. At the same time, the order passed by the Sub Court through procedurally incorrect but nevertheless was intended to speed up the proceeding before the lower court on merits. I am of the view that the petitioner cannot be faulted for approaching this Court under Article 227 of the Constitution of India as the relief that was not sought for has been granted by the Sub-Court in C.M.A.No.4 of 2012.

17. Therefore, in order to balance the interest and to meet the ends of justice, I am of the view that even though the Sub Court had exceeded the jurisdiction, the impugned order passed by the said court requires no interference except to direct the 1st respondent to pay a token cost of Rs.1,500/- to the petitioner within a period of 4 weeks from the date of receipt of copy of this order.

18. The 1st respondent shall therefore deposit the aforesaid amount within a period of 4 weeks from the aforesaid date to the credit of O.S.No.924 of 2009 before the District Munsif Court, Kadpadi.

19. On such deposit, the learned District Munsif, Katpadi shall proceed to take up the suit for final disposal after giving time to the petitioner, 2nd and the 3rd respondent to file their respective written statements. The Court shall

endeavour to complete the trial and pass final judgment and decree within a period of six months from the date of receipt of copy of this order.

20. The above civil revision petition stands disposed. No cost.

Consequently, connected miscellaneous petition is closed.

04.06.2019

Index :Yes/No
Internet :Yes/No
Speaking : Non Speaking order
kkd/jen

To

1.The Sub Court,
Vellore.

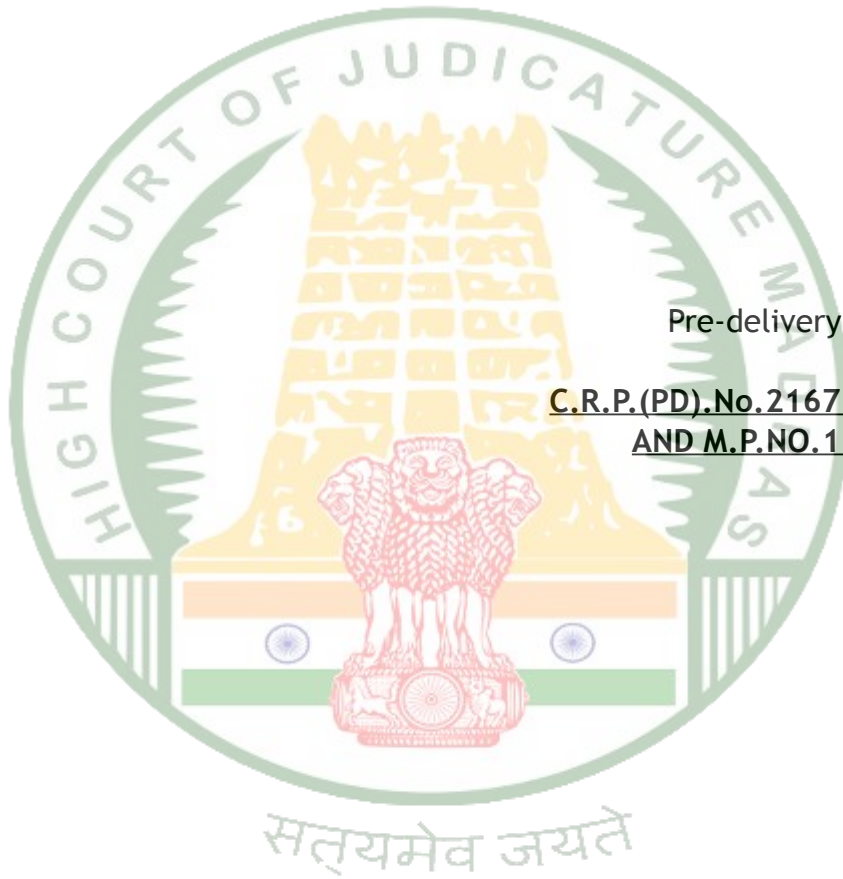
2.The Section Officer,
V.R.Section, High Court, Madras.



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C.SARAVANAN,J.

Jen/kkd



Pre-delivery order in

C.R.P.(PD).No.2167 of 2014
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