

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2019

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD)No.2868 of 2014

and

MP No.1 of 2014

1. Shanmugam
2. Kandhasamy

.... Petitioners

versus

Arulmigu Selva Vinayagar Kovil,
Giridharan Pettai,
Cheyyar Taluk,
Tiruvannamalai District.

.... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed by Principal District Munsif cum Judicial Magistrate No.1 at Cheyyar, dated 30.06.2011 made in I.A. No.77 of 2004 in O.S. No.49 of 1987

For Petitioner : Mr.B. Jawahar
For respondent : No appearance

ORDER

The instant civil revision petition has been filed challenging the

order dated 30.06.2011, passed by the Principal District Munsif cum Judicial Magistrate Court No.I at Cheyyar, in I.A. No.77 of 2004 in O.S. No.49 of 1987.

Brief facts leading to the filing of the instant Civil Revision

Petition filed under Article 227 of the Constitution of India.

2. The petitioners are the legal representatives of the deceased P.Chinnathambi Mudaliar. A suit was filed by the respondent temple before the Principal District Munsif cum Judicial Magistrate Court No.I at Cheyyar, in O.S. No.49 of 1987, seeking for a declaration in respect of the suit schedule property that the temple is the absolute owner of the same and also for recovery of possession from the defendant. An ex-parte decree came to be passed against P.Chinnathambi Mudaliar on 06.03.1987. Thereafter, the Execution Petition viz. E.P. No.89 of 1999 was also filed by the respondent temple to execute the ex-parte decree against the petitioners' father against whom, the ex-parte decree was passed, who died in the year 1997. The petitioners, who are the legal representatives of the deceased defendant P.Chinnathambi Mudaliar filed I.A. No.77 of 2004 in O.S. No.49 of 1987, seeking to condone the delay of 5417 days in filing an application to set aside the ex-parte decree, dated 06.03.1987. The

reason given in the affidavit filed in support of I.A. No.77 of 2004 is that the petitioners came to know about the ex-parte decree only on receipt of notice in the Execution Petition and it is their case that immediately on receipt of the said notice, they have filed the application viz., I.A. No.77 of 2004, seeking condonation of the delay of 5417 days in filing an application to set aside the ex-parte decree. A counter affidavit was also filed by the respondent temple in I.A. No.77 of 2004, denying the allegations contained in the affidavit of the petitioners filed in support of I.A. No.77 of 2004 and stating that no sufficient reasons have been given by the petitioners for condoning the inordinate delay.

3. The Trial Court, by its order dated 30.06.2011, dismissed I.A. No.77 of 2004 in O.S. No.49 of 1987 on the ground that the petitioners have not given sufficient reasons for condoning the inordinate delay. Aggrieved by the order, dated 30.06.2011 passed in I.A. No.77 of 2004 in O.S. No.49 of 1987, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India.

4. Heard Mr.B. Jawahar, learned counsel for the petitioner. Despite service of notice on the respondent and the name of the

respondent having been printed in the cause list today, no one has entered appearance on the side of the respondent in this Civil Revision Petition.

5. According to the learned counsel for the petitioners, the petitioners came to know about the ex-parte decree only after service of notice in the Legal Representatives application filed in E.P. No.89 of 1999 by the respondent temple. According to the learned counsel for the petitioners, the Execution Petition was filed on the 12th year after the ex-parte decree came to be passed against the father of the petitioners in the year 1987.

6. According to the learned counsel for the petitioners, the petitioners should be given an opportunity to defend the suit, as they have got valid documents to establish their ownership and possession of the suit schedule property. Further, the learned counsel for the petitioners submitted that in respect of the adjoining properties, the respondent temple had filed similar suits and the suits came to be dismissed in the year 2005 and therefore, the petitioners, who are also sailing in the same boat should also be given an opportunity to defend the suit on merits.

Discussion :-

7. This Court has perused the impugned order. Admittedly, the ex-parte decree came to be passed against P.Chinnathambi Mudaliar, the father of the petitioners, in the year 1987. P. Chinnathambi Mudaliar, who is the defendant in the suit died only in the year 1997. The Execution Petition was filed by the respondent temple only in the year 1999. For 10 long years, after the passing of the ex-parte decree in the year 1987, the father of the petitioners, who is the defendant in the suit did not take any steps to set aside the ex-parte decree passed against him. The petitioners, who are the legal representatives of the defendant P.Chinnathambi Mudaliar have filed the application to set aside the ex-parte decree by filing an application to condone the inordinate delay of 5417 days in I.A. No.77 of 2004. It is their case that only on receipt of the notice in the Legal Representatives application filed by the respondent temple in the Execution Petition filed in the year 1999, they came to know about the passing of an ex-parte decree against their father P.Chinnathambi Mudaliar in the year 1987.

8. Admittedly, even while, the defendant in the suit P.Chinnathambi Mudaliar was alive, he did not take steps to set aside

the ex-parte decree for 10 years. Therefore, as the deceased defendant, who himself was not vigilant and not shown any urgency in contesting the suit and having slept over his rights for more than 10 years, his legal representatives cannot now be allowed to contest the suit that too after the lapse of almost 31 years, when the ex-parte decree came to be passed.

9. This Court has also perused and examined the impugned order. The Trial Court has rightly dismissed the application as no sufficient reasons have been given by the petitioners for condonation of the inordinate delay in filing the application to set aside the ex-parte decree.

10. In the result, there is no merit in the Civil Revision Petition. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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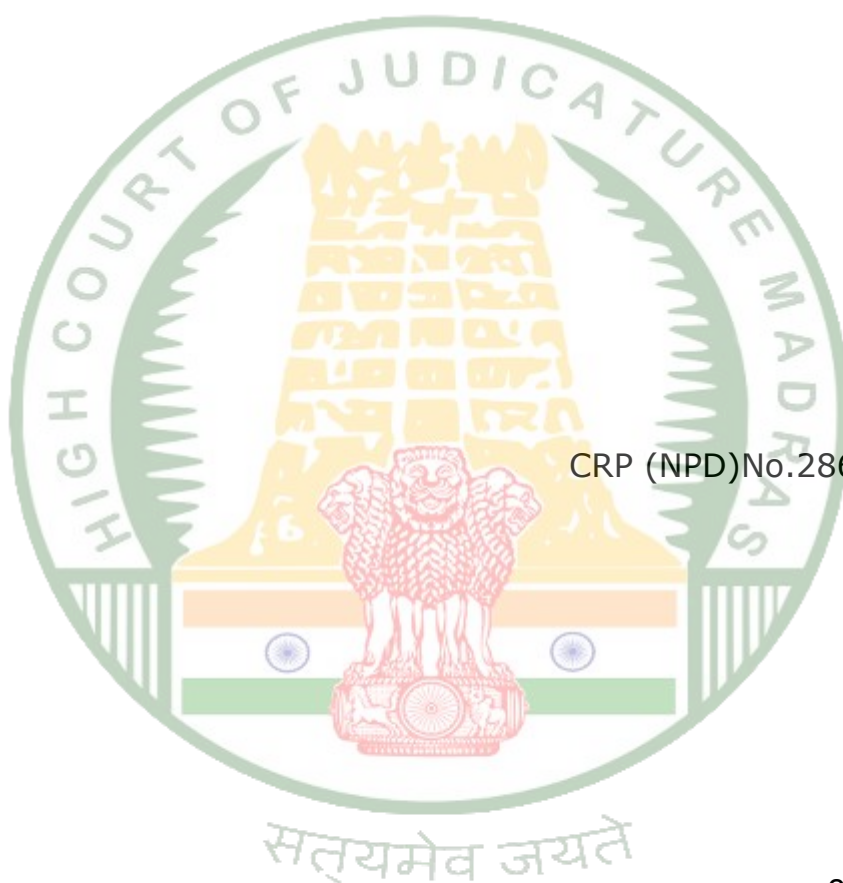
To
The Principal District Munsif
cum Judicial Magistrate No.1,
Cheyyar.



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ABDUL QUDDHOSE, J.

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