

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2019

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (NPD) No.3383 of 2014
&
M.P.No.1 of 2014

Sellamuthu

... Petitioner

Vs

1.Kuppusamy @ Mookan
2.Yasodha
3.Yogapriya
4.Raja

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure challenging the order and decretal order dated 21.11.2013 passed in R.E.A.No.618 of 2012 in R.E.P.No.221 of 2008 in O.S.No.642 of 1997 before the Additional District Munsif Court, Namakkal.

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For Petitioner : Mr.S.R.Varun Karthik
for Mr.C.Jagadish

For Respondents : No appearance

ORDER

The instant revision has been filed challenging the order dated 21.11.2013 passed by the learned Additional District Munsif, Namakkal in R.E.A.No.618 of 2012 in R.E.P.No.221 of 2008 in O.S.No.642 of 1997.

Brief facts leading to the filing of the instant revision under Section 115 of the Code of Civil Procedure:

2. The petitioner is the Judgment debtor in R.E.P.No.221 of 2008 pending on the file of the learned Additional District Munsif, Namakkal. One Jaganathan and Kuppusamy alias Mookan filed a suit O.S.No.642 of 1997 on the file of the learned District Munsif, Namakkal against the petitioner for permanent injunction and for mandatory injunction in respect of the suit schedule property. The said suit came to be decreed in favour of the plaintiffs in the said suit on 11.07.2002. Jaganathan, the first plaintiff in the suit died subsequently and the respondents 2 to 4 who are his legal heirs were impleaded as parties to the suit. R.E.P. No.221 of 2008 was filed by the respondents to execute the Judgment and Decree dated 11.07.2002 passed by the learned

District Munsif, Namakkal in O.S.No.642 of 1997 for restriction of pathway as per the judgment and decree dated 11.07.2002 granted in O.S.No.642 of 1997. An ex parte decree dated 15.07.2009 was passed against the petitioner in favour of the respondents 1 to 4. R.E.A.No.618 of 2012 in R.E.P.No.221 of 2008 in O.S.No.642 of 1997 was filed by the petitioner to condone the delay of 1172 days in filing an application to set aside the ex parte decree dated 15.07.2009 passed in R.E.P.No.221 of 2008. As seen from the affidavit filed in support of R.E.A.No.618 of 2012, the reason given by the petitioner is that since the impleading applications were pending to implead the legal heirs of the decree holder, they were unable to file an application earlier.

3. A counter affidavit was also filed by the respondents in R.E.A.No.618 of 2012 denying the allegations of the petitioner. By order dated 21.11.2013, the executing court dismissed R.E.A.No.618 of 2012 in R.E.P.No.221 of 2008 in O.S.No.642 of 1997. Aggrieved by the dismissal of R.E.A.No.618 of 2012 in R.E.P.No.221 of 2008 in O.S.No.642 of 1997, the instant revision has been filed.

4. Heard Mr.S.R.Varun Karthik, learned counsel for the petitioner. Despite service of notice and the names of the respondents having been printed in the causelist today, no one has entered appearance on their behalf.

Discussion:

5. This Court has also perused the execution petition namely R.E.P.No.221 of 2008. The respondent has sought for an execution in R.E.P.No.221 of 2008 only in terms of judgment and decree dated 11.07.2002 passed in O.S.No.642 of 1997. The schedule of the properties mentioned in the plaint schedule in O.S.No.642 of 1997 wherein the judgment was passed in favour of the respondents and the schedule contained in the execution petition in R.E.P.No.221 of 2008 are identical. Therefore, the petitioner cannot now plead that there is improper description of the property.

6. Admittedly, the petitioners had received the notice in the execution petition R.E.P.No.221 of 2008. Despite receipt of the notice, the petitioners did not contest the execution petition diligently, instead as seen from the impugned order, they had been continuously seeking

adjournments. Only thereafter, they were set ex parte on 15.07.2009 in R.E.P.No.221 of 2008. However, they chose to file an application to condone the delay of 1172 days in filing an application to set aside the ex parte order dated 15.07.2009 instead of filing of an application to set aside the ex parte order immediately after they were set ex parte on 15.07.2009 itself.

7. This Court has also perused the impugned order. The Trial Court has rightly held that no sufficient reasons have been given by the petitioner for condoning this inordinate delay. This Court does not find any infirmity in the order passed by the executing court and there is absolutely no merit in this civil revision petition.

Conclusion:

8. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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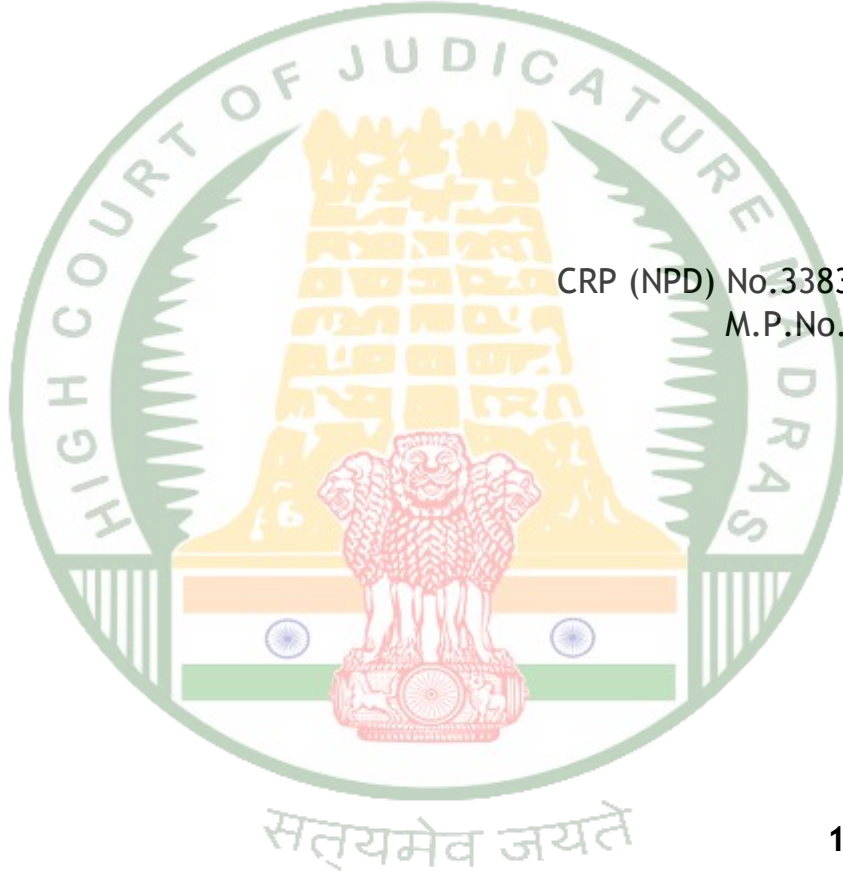
Index: Yes/ No

Speaking Order/Non-speaking Order

ABDUL QUDDHOSE, J.

To

The Additional District Munsif Court, Namakkal.



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