

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP(NPD)No.4051 of 2014
and M.P.No.1 of 2014

A.Najundan ... Petitioner
Power of Attorney Mr.P.Appavoo Chetty,
Door No.14, Dharmalingam Street,
No.2, Linemadu,
Salem – 636 006.

Vs

1.D.Tamil Selvi
2.Sellammal ... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order made in I.A.No.50 of 2013 in Unnumbered A.S.No. of 2013 dated 18.07.2014 passed by the Learned Principal Subordinate Judge, Salem.

For Petitioner : Mr.A.Nagarathinam

For Respondents : Mr.P.Nagaraju for R1 & R2

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 18.07.2014, passed by the Principal Subordinate Judge, Salem, in I.A.No.50 of 2013 in Unnumbered A.S.No. of 2013.

Brief facts leading to the filing of instant revision:

2.The petitioner is the plaintiff in the suit O.S.No.699 of 2010 on the file of the District Munsif Court, Salem. The said suit was filed for mandatory injunction and was dismissed by the trial Court on 21.09.2012. Aggrieved by the same, the petitioner preferred an appeal before the Principal Subordinate Court, Salem. However, the said appeal was filed with a delay of 241 days. I.A.No.50 of 2013 was filed by the petitioner to condone the delay of 241 days in filing the appeal as against the judgment and decree dated 21.09.2012, passed in O.S.No.699 of 2010. As seen from the affidavit filed in support of I.A.No.50 of 2013, the reason for not filing the appeal within the prescribed period given by the petitioner is that he was in the United States of America for his medical treatment, where his sons are residing there. According to him, he came to know about the judgement and decree passed against him only after his return to India. According to him, only due to the said reason there was a delay of 241 days in filing the appeal. A counter affidavit was also filed by the second respondent, who is the second defendant in the suit denying the averments contained in the affidavit filed by the petitioner in support of I.A.No.50 of 2013.

3.By order dated 18.07.2014, the Court below dismissed I.A.No.50 of 2013 filed by the petitioner on the ground that sufficient reasons have not been given for condoning the delay.

4.Aggrieved by the same, the instant Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India.

5.Heard Mr.A.Nagarathinam, learned counsel for the petitioner and Mr.P.Nagaraju, learned counsel for the respondents.

6.Admittedly, the petitioner is the plaintiff in the suit O.S.No.699 of 2010, which came to be dismissed on 21.09.2012. He has filed the suit for mandatory injunction to direct the respondents to demolish the alleged illegal construction put up by them in the suit schedule property.

7.The petitioner being the plaintiff in the suit ought to have been given opportunity by the Court below to file an appeal when sufficient reasons have been in the affidavit filed in support of I.A.No.50 of 2013, that too when the said delay is only 241 days.

8.The reason given by the petitioner for not filing the appeal within the prescribed period seems to be a genuine one. A person will normally not give the reason that he had gone to United States of America for taking treatment if it was not true. Further, the respondents have also not disproved the reason given by the petitioner for not filing the appeal within the prescribed period. The trial Court has not considered all these factors in the impugned order. Therefore, this Court is of the considered view that the impugned order is an erroneous order and has to be set aside and the petitioner must be given an opportunity to file an appeal as against the judgment and decree dated 21.09.2012 passed in O.S.No.699 of 2010.

9.In the result, the impugned order dated 18.07.2014, passed by the learned Principal Subordinate Judge, Salem in I.A.No.50 of 2013 in unnumbered A.S.No. of 2013, is hereby set aside and the Civil Revision Petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

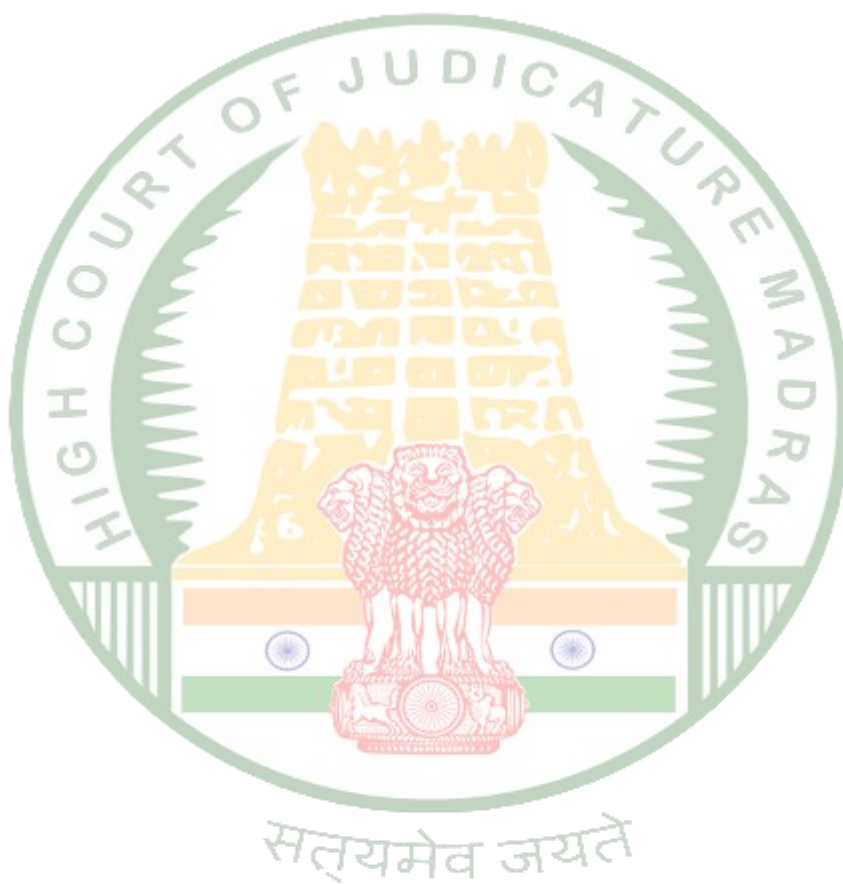
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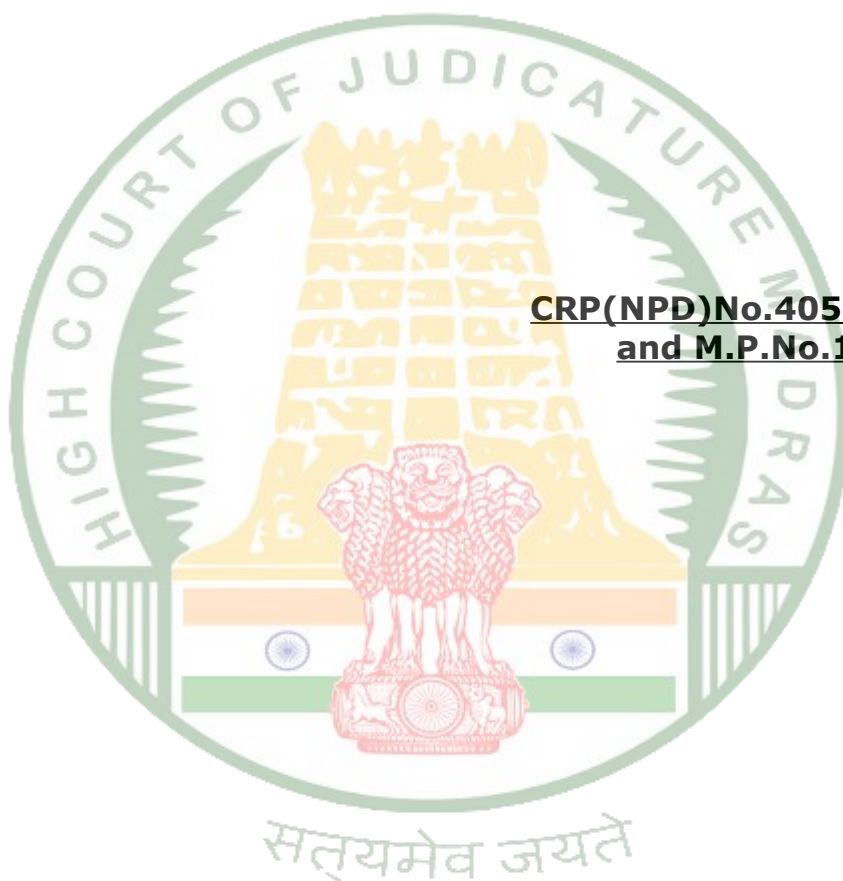
The Principal Subordinate Judge, Salem.



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ABDUL QUDDHOSE, J.

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