

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4382 of 2014
and M.P.No.1 of 2014

1. The Special Tahsildar (L.A),
N.H. four lane Road,
Having municipality shopping complex,
Bangalore Road,
Krishnagiri.
 2. The State of Tamil Nadu,
Rep. by the District Collector,
Krishnagiri.
- ... Petitioners

Vs

S.V.Chinnasamy ... Respondent

PRAYER : Civil Revision Petition is filed under Section 115 of CPC., to set aside the order and decretal order dated 23.06.2014 made in I.A.No.1023 of 2013 in O.S.No.89 of 2008 on the file of the District Munsif Court, Krishnagiri.

For Petitioners : Mr.N.Manikandan
Government Advocate (CS)

For Respondent : Mr.J.Hariharan
For Mr.V.Nicholas

ORDER

This Civil Revision Petition has been preferred against the order passed in I.A.No.1023 of 2013 in O.S.No.89 of 2008 on the file of the learned District Munsif, Krishnagiri.

2. Before the trial Court the respondent in this petition had filed a suit in O.S.No.89 of 2008, seeking relief of declaration declaring that the respondent/plaintiff is having 2/5th right in the suit well, which was acquired by the first petitioner/5th defendant and for the relief of mandatory injunction, directing the first petitioner/fifth defendant to pay the 2/5th share of compensation amount fixed for the acquired suit well to the plaintiff.

3. In fact, the said suit has been filed as against one Chinnathambi and Muthu, the individual persons, who were arrayed as first and second defendants and the other defendants 3 to 6 are the government officials, who acquired the well belongs to the respondent. Before the trial Court after receiving written statement from the petitioners herein, when the case was posted for trial, there was no representation on the side of petitioners. Hence, the learned District Munsif, Krishnagiri passed an exparte decree on 03.02.2011 in the

absence of the petitioners herein. After passing the order of exparte decree, only on 24.09.2012, the petitioners filed an application in I.A.No.1023 of 2013, under Section 5 of Limitation Act, for condoning the delay of 595 days to set aside the exparte decree. The learned District Munsif, Krishnagiri after affording due opportunity to the respondent/plaintiff had dismissed the said application on 23.07.2014 by mentioning the reason that the application was filed only to procrastinate the proceedings and to make a trouble to the respondent for reaching the conclusion of the execution proceedings. It is true, after passing an exparte decree, the respondent herein filed an execution petition, in which the attachment order was passed in respect of the compensation awarded to the land acquired by the government.

4. The learned counsel appearing for the petitioners would contend that if the suit is not disposed of on merits, the petitioners are answerable to the first and second defendants to the suit in disbursing the award amount. Hence an elaborate trial is required for the suit filed by the respondent.

5. On the other hand, the learned counsel appearing for the respondent would contend that the petitioners filed an application

without mentioning sufficient cause to condone the delay and the petitioners have not stated any specific reason for the delay. The only averment made in the affidavit filed by the petitioners is that due to important meeting, they are not in a position to attend the Court hearing on 03.02.2011.

6. The learned counsel appearing for the respondent further submitted that in the said circumstances, it is necessary to see the period of delay which requires to be condoned by the petitioners. Since the application for condoning the delay has been filed to condone 595 days, the reasons stated by the petitioners is not at all having any merits. Being the Government servants, if really they are having any interest to proceed the case, they have to present the application to set aside the exparte order immediately within a month of February 2011. Therefore no sufficient cause was projected by the petitioners.

7. In this connection, considering the contentions raised by the learned counsel appearing for the petitioners, of course it is the duty of the petitioners to distribute the compensation to the parties who are having right over the suit property. In other words, the suit has been filed only to determine the right of suit well and only in

accordance with the right of the respondent as referred above in the plaint. So far as the determination of the right of the suit property is concerned, an elaborate trial is necessary. Further, the learned District Munsif, Krishnagiri had failed to consider the background of the case projected by the petitioners. So, I am of the opinion that this Civil Revision Petition deserves to be allowed. However, the suit in respect to the claim made by the respondent filed in the year 2008, hence it is appropriate to give direction to the learned District Munsif, Krishnagiri to dispose of the matter within a time frame. Accordingly, the learned District Munsif, Krishnagiri directed to dispose of the suit in O.S.No.89 of 2008, within a period of four months from the date of receipt of a copy of this Order.

8. With the above direction, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

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05.09.2019

Index :Yes/No

Internet :Yes/No

Speaking order/Non-speaking order

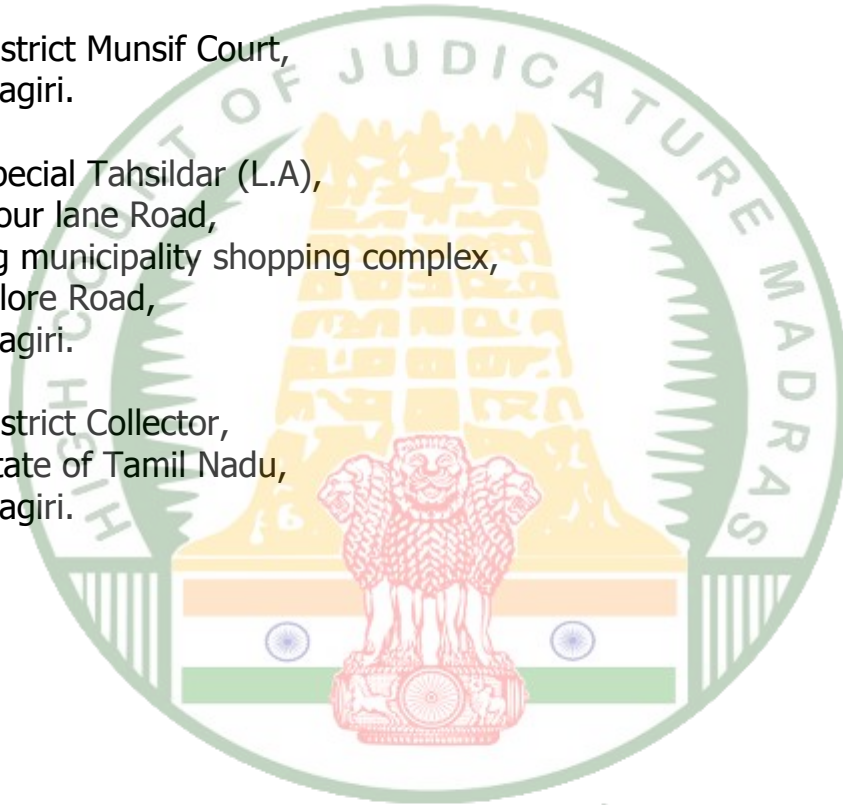
rts

R.PONGIAPPAN, J

rts

To

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