

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD)No.4507 of 2014

and M.P.No.1 of 2014

Kalimuthu @ V.K.S.Harish
Rep. by his Power of Attorney,
Mudhiyalu Ammal,
104, Kurinchi Illam,
Periyar Nagar, 4th Cross, Harur,
Dharmapuri District.

Petitioner /
5th Defendant

[Sole Petitioner is recorded as LR of the deceased R-4 viz. Kalaiselvi vide order dated 26.09.2019 made in C.R.P.(NPD)No.4507 of 2014 and as per memo dated 26.09.2019 (Presented in Court)]

versus

1.Priya

1st Respondent /
3rd Defendant

2.Brinda

2nd Respondent /
1st Defendant

3.Lakshmi

3rd Respondent /
2nd Defendant

4.Kalaiselvi (Died)

4th Respondent /
4th Defendant

5.Kaliappa Gounder and sons
Sun Beedi Traders and
Partner A.Yuvaraj
S/o.V.K.Arumugam,
Jolarpettai, Thiruppathur Taluk,
Vellore District.

5th Respondent /
Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.07.2014 made in I.A.No.147 of 2014 in O.S.No.245 of 1991 on the file of the Subordinate Judge, Thiruppathur.

For Petitioner : Mr.R.Subramanian

For Respondent No.1 : Mr.M.Manoj
for Mr.G.Jeremiah

For Respondent Nos.2 & 3 : Given up

For Respondent No.4 : Died

For Respondent No.5 : No Appearance

ORDER

The petitioner herein is the fourth respondent / fifth defendant in I.A.No.147 of 2014 in O.S.No.245 of 1991 on the file of the learned Subordinate Judge, Thiruppathur.

2. Before the trial Court, the fifth respondent / plaintiff has filed a Suit in O.S.No.245 of 1991, as against the petitioner and respondents 1 to 4 / defendants, for the relief of declaration, declaring that the plaintiff's firm are discharged from all liability to the defendants in respect of the deceased partner V.K.Shanmugam's amount claimed by the defendants and dismiss the plaintiff's firm from the suit.

3. On 10.08.2004, when the suit was posted for the appearance of the first respondent / third defendant, she has not appeared before the trial Court. Hence, the learned Subordinate Judge, Thiruppathur, has passed an *ex parte* order against the first respondent / third defendant. Only in the said circumstances, the first respondent has filed an application in I.A.No.147 of 2014, to set aside the said order.

4. The learned Subordinate Judge, Thiruppathur, after affording an opportunity to the other respondents, by an order dated 22.07.2014, allowed the application filed by the first respondent.

5. Challenging the said order, the petitioner / fifth defendant has filed this Civil Revision Petition, seeking to set aside the order dated 22.07.2014 made in I.A.No.147 of 2014.

6. The learned counsel appearing on behalf of the petitioner would contend that, since the connected suit in O.S.No.78 of 2004 was transferred and renumbered as O.S.No.245 of 1991, the order passed by the learned Subordinate Judge, Thiruppathur, is perverse. Further, he would contend that the second respondent / first defendant and others have filed

another Suit in O.S.No.296 of 2005, based on a Will that the suit was decreed *ex parte* and the petition to set aside the *ex parte* decree filed by the eviction petitioner is pending and in fact, there is a connected suit, which should be tried along with O.S.No.245 of 1991.

7. On the other hand, the learned counsel appearing for the first respondent would contend that, though the connected suit is pending in respect to the suit schedule property, trying the same as against the petitioner in a full pledged manner, is the only remedy for availing the substantial justice. According to him, the order dated 22.07.2014, is not having any material irregularity.

8. Heard the submissions made by the learned counsel appearing on either side.

9. Now, on going through the impugned order passed by the learned Subordinate Judge, Thirupattur, it is seen that the first respondent has not appeared before the trial Court. Subsequently, the *ex parte* order has been set aside against the sister of the first respondent on payment of cost of Rs.5,000/-. Further, the main case itself was posted for filing proof affidavit of

the plaintiff. Thereafter, the first respondent / third defendant undertook to co-operate for speedy disposal of the main case. Based on the said reason, the learned Subordinate Judge, allowed the application filed by the first respondent and set aside the *ex parte* order.

10. Moreover, the application filed by the first respondent was before the commencement of the trial and hence, it cannot be said that the first respondent has filed the application to set aside the *ex parte* order in a belated manner. The learned Subordinate Judge, in its order dated 22.07.2014 has clearly held that the suit filed by the fifth respondent was unnecessarily pending for more than 22 years. Only after observing as above, for the purpose of deciding the issue involved and also for giving an opportunity, the trial Court has passed the said order. In otherwise, in the impugned order passed by the learned Subordinate Judge, he has not stated that the first respondent was responsible for the delay. Apart from that the fifth respondent, who is the plaintiff has not aggrieved over the impugned order.

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11. In this occasion, it is relevant and useful to consider the judgment of our Hon'ble Apex Court in **ROBIN THAPA vs. ROHIT DORA** reported in (2019) 7 SCC 359, in which, it has held as follows;

“7. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

12. Further, in the case of **RAM NATH SAO vs. GOBARDHAN SAO** reported in (2002) 3 SCC 195, in which, our Hon'ble Apex Court has observed as follows;

“The expression “sufficient cause” within the meaning of Section 5 of the Limitation Act, 1963 or Order 22 Rule 9 CPC or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute “sufficient cause” or not will be dependent upon facts of that case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps.”

13. Accordingly, following the principles laid down by our Hon'ble

Apex Court in the above referred judgments, for rendering substantial justice to the parties, elaborate trial is necessary. Hence, I am of the opinion that the impugned order dated 22.07.2014 passed by the learned Subordinate Judge, Thiruppathur, in I.A.No.147 of 2014 in O.S.No.245 of 1991, does not indicate any material irregularity.

14. For the foregoing reasons, the Civil Revision Petition stands dismissed. Considering the fact that the suit is pending from the year 1991, the learned Subordinate Judge, Thiruppathur, is directed to dispose of the suit in O.S.No.245 of 1991 as early as possible, preferably within a period of six (6) months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

14.10.2019

Speaking Order/Non Speaking Order

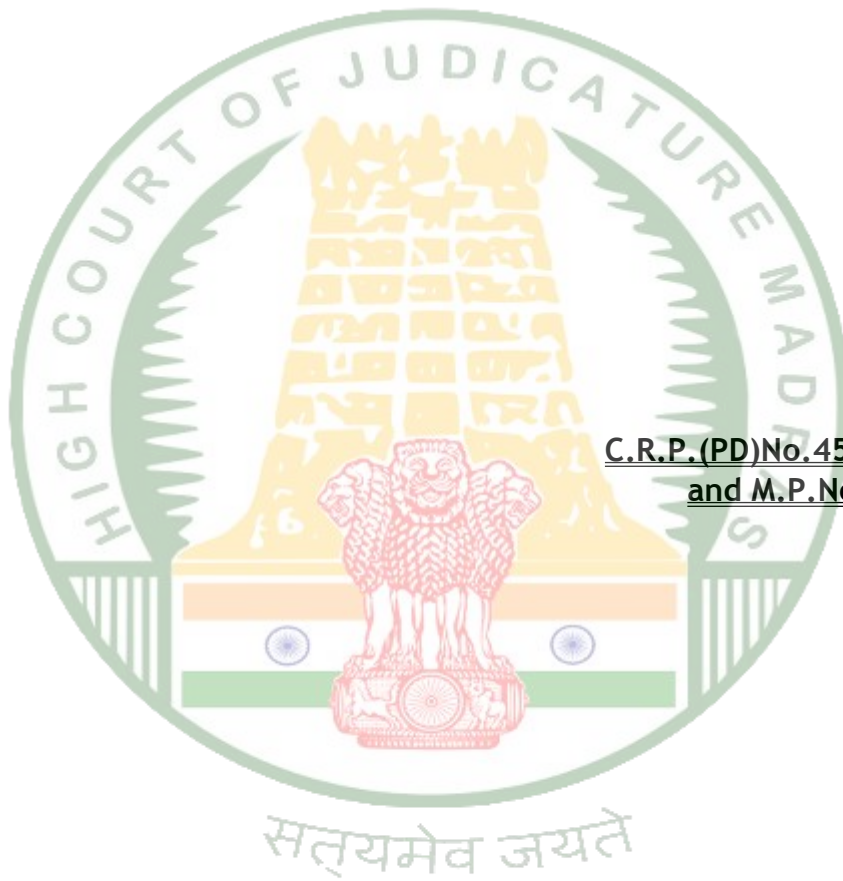
Index : Yes / No

Internet : Yes
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To

The Subordinate Judge, Thiruppathur.

R.PONGIAPPAN, J.,
sri



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