

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD)No.2286 of 2019

and

CMP.No.14907 of 2019

1.Jarina Begam

2.Riyad Bivi

3.Rahamed Nisha

4.Baragath Nisha

... Petitioners

Vs.

1.A.Venkatachalam

A.Thirupathy (died)

A.Angusami (died)

2.N.Jayalakshmi

3.T.Susila Devi

4.T.Angulakshmi

5.Lakshmi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decretal order dated 07.06.2019 made in E.A.No.61 of 2017 in E.P.No.17 of 2010 in O.S.No.206 of 1989 by the District Munsif Court, Ponneri.

For Petitioners

: Mr.V.K.Elango for R.Barnabas

ORDER

The petitioners' father suffered a decree in OS.No.206 of 1989 and the decree came to be passed on 03.04.1998 setting the petitioner's father ex-parte. The case of the petitioners is that originally the property owned by one Marimuthu Ammal, the 3rd defendant in the suit. She sold the property to the 2nd defendant, who in return sold to the 1st defendant. The petitioners' father being the purchaser, arrayed as a 4th defendant in the suit and all of them were set ex-parte and an ex-parte decree came to be passed. Thereafter, the respondents/decreed holders filed an Execution Petition in the year 2010. When notice was sent to the 4th defendant/father of the petitioners, it was informed to the Court by the petitioners that 4th defendant is no more and that they are the legal heirs. Thereafter, the petitioners were impleaded and notice was sent to them in the year 2013 and they have engaged the counsel to defend the Execution Petition. But the counsel has not properly informed the development and they were set ex-parte and delivery was ordered by the Execution Court. Only at the time of the visit of Bailiff to take possession, they became aware of the Execution proceeding and filed a petition to set aside the ex-parte order passed against them with the delay of 1137 days. The said petition was dismissed by the Execution Court on the ground that the petitioners have not given sufficient reason to condone the delay. Aggrieved over the same, the present Civil Revision Petition is

2. The learned counsel for the petitioners would vehemently contend that the petitioners are the title holders. Further, for the mistake of the counsel, the litigant should not suffer.

3. Considering the materials available before this Court, it is clear that all the persons concerned with the property were impleaded as defendants. All of them suffered decree in the year 1998. The petitioners cannot claim a better title than the predecessors in title. The decree has become final and is not challenged till date. Further, the present petition is filed to condone the delay in filing the petition to set aside the ex-parte order passed in the Execution Petition.

4. It is an admitted fact that they have received notice in the Execution Petition, at an earliest point of time and informed the Court that the 4th defendant/Ibrahim is no more and consequently, they were impleaded as parties in the Execution Petition on 17.01.2013. Thereafter they have entered appearance in the Execution Petition through a counsel. Having entered appearance, it is the duty of the petitioner to vigilantly follow up the execution proceedings to preserve and establish their rights. Having failed to do so, after 1137 days, the petitioners are not entitled to feign ignorance of the Execution Petition. It is not stated by the petitioners that they got knowledge only after the visit of the

bailiff, but contrary to the same they had knowledge of the execution as early as in the year 2013. There was no explanation coming forth for not following the execution proceedings diligently. In the absence of sufficient reasons to do so, the petitioners are bound to fail. The Execution Court has rightly dismissed the petition.

5. I do not find any infirmity in the order passed by this Court. Therefore, the Civil Revision Petition has no merit for consideration.

6. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is open to the petitioner, if advised, to approach the Execution Court under relevant provisions of law to establish their case.

18.07.2019

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Index:Yes/No

Internet:Yes/No

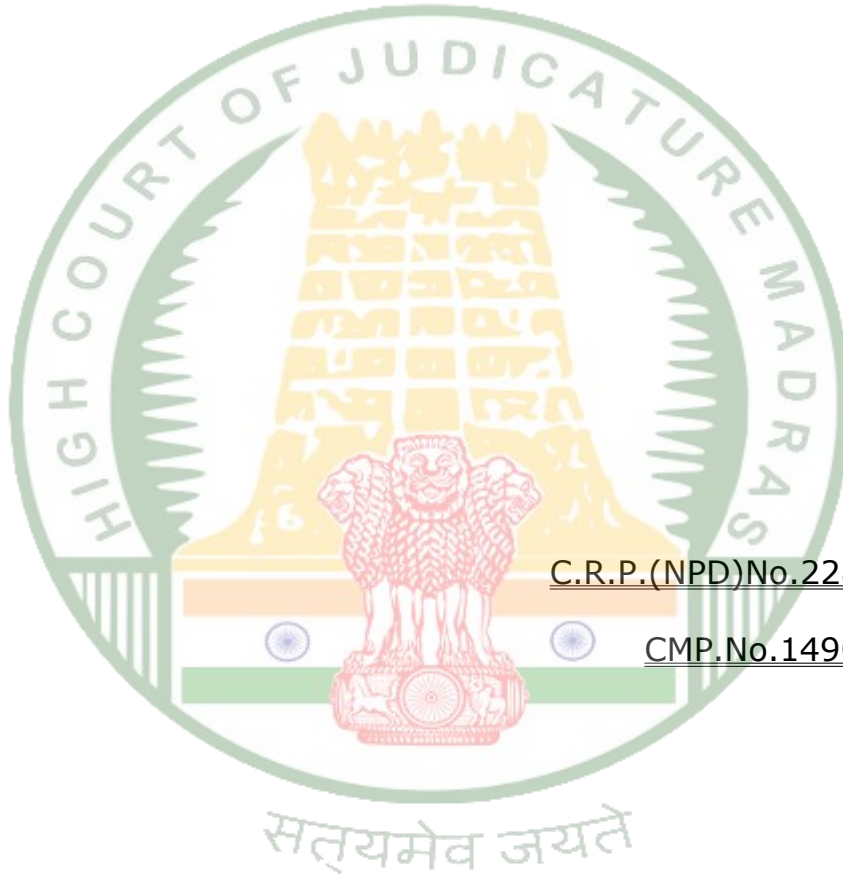
Speaking Order/Non Speaking Order

To

The District Munsif Court,
Ponneri.

M. GOVINDARAJ, J.

bri



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