

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.1411 of 2010

and

MP.No.1 of 2010

1.Angamuthu
2.Sumathi
3.Angammal
4.Baby
5.Vijayalakshmi

... Petitioners

Versus

1.Chinnaponnu
2.Saroja
3.Vijayakumar
4.Kavitha
5.Rajendran
6.Jaganathan
7.Natarajan
8.Logambal
9.Mahdewari

... Respondents

Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order dated 21.10.2009 in I.A.No.732 of 2008 in O.S.No.200 of 2005 on the file of the District Munsif Court, Mettur.

For petitioners : Mr.D.Sivakumaran

For Respondents : No Appearance

ORDER

The plaintiffs are the revision petitioners herein.

2.The plaintiffs filed the suit in O.S.No.200 of 2005 for declaration of title and permanent injunction. In spite of the fact that the suit was filed on 09.08.2005, the defendant has not filed any written statement. Therefore, on 22.03.2006, the suit was decreed as ex-parte for non-filing of written statement. Subsequently, the defendants/respondents herein has filed an application in I.A.No.732 of 2008, under Order IX and Rule 13 of CPC., to set aside the ex-parte decree, dated 22.03.2006 and to condone the delay of 672 days in filing an application to set aside the ex-parte decree dated 22.03.2006 under Section 5 of the limitations Act, 1963.

3.In connection with the averments made in the affidavit filed in support of I.A.No.732 of 2008, the 5th respondent herein was examined as PW1 and one Muthu, Co-worker was examined as PW.2. On behalf of the defendants side, the first petitioner herein/Angamuthu was examined as RW.1. The learned District Munsif, Mettur, on consideration of both the oral and documentary evidence had allowed the application filed for condoning the delay of 672 days and set aside the ex-parte decree passed in the suit with costs of Rs.1,000/-

4.According to the counsel for the petitioners, the petitioners were not satisfied with the order passed by the trial court and therefore, they have not received the costs from the other side. It is further stated that there is no acceptable reason assigned in the affidavit filed by the

respondents herein to condone the huge delay. Therefore, the plaintiffs have preferred this revision petition.

5. Heard the learned counsel for the petitioners and perused the materials available on record. Though notice served to the respondents, none appeared on their behalf.

6. On perusal of records and evidence of PW.1 and PW.2, it is seen that the 5th respondent herein is doing Centring work at Trippur at the relevant point of time. PW.1 and PW.2 along with the co-workers were engaged in a Centring work at Trippur and they were moving in and around to do their work for Civil Constructions, therefore, they could not contest the suit and the same has become decreed as ex-parte.

7. It is seen from the records that the petitioners did not receive the letter of the counsel since they stayed away in connection with their Centring work for four months and they could not contact their counsel at the relevant point of time. Considering the same, the trial court concluded that since the parties are relatives, it is always desirable for disposal of the suit on merits, hence, liberty was given to the defendants to put forth their defence in the suit. Thus, the reason stated by the 5th respondent herein was accepted and the Trial Court has rightly allowed the application, however, awarded costs of Rs.1,000/- payable to the respondents therein.

At the same time, keeping the submissions of the learned counsel for the petitioners, the costs of Rs.1,000/- is hereby enhanced to Rs.1,500/- which has to be paid to the learned counsel for the respondents before the Court below.

8. With these observations, the Civil Revision Petition is dismissed by confirming the order passed by the Trial court. This Court directs the Trial Court to set aside the ex-parte decree in the suit upon payment of costs of Rs.1,500/- by the respondents herein to the petitioners herein, within a period of eight weeks and also produce the copy of receipt of such payment. The Trial Court is also directed to complete the trial within a period of 16 weeks thereafter. Consequently, the connected miscellaneous petition is closed.

17.02.2020

Index : yes/no
Internet : yes/no
Speaking/Non-Speaking order

klr

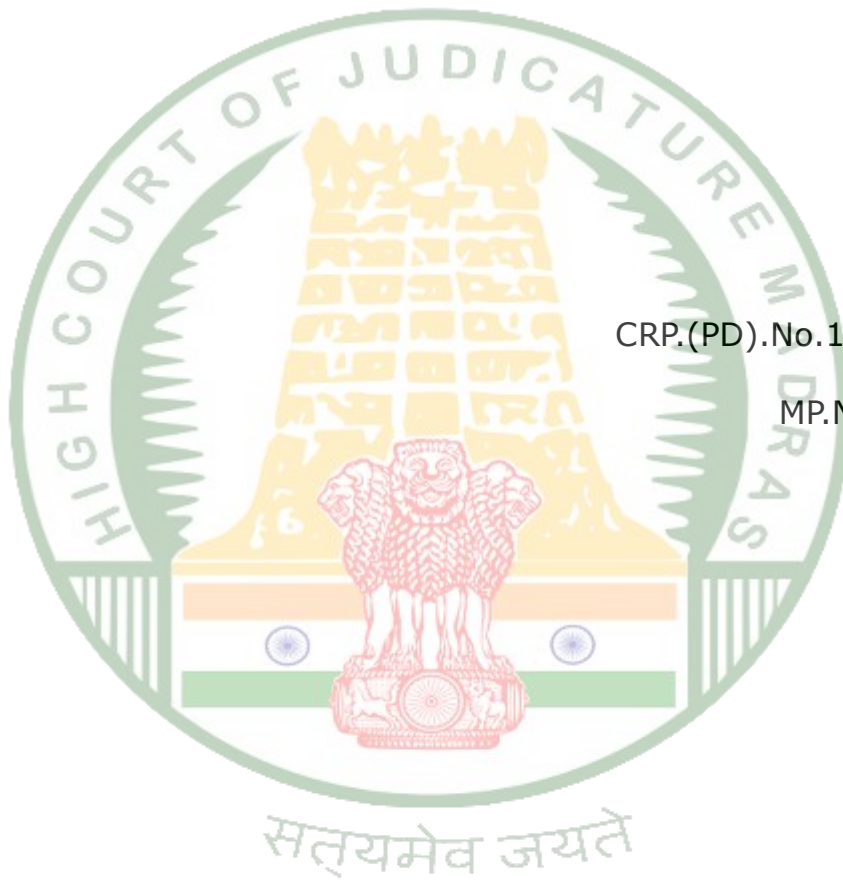
Note: Registry is directed to dispatch the order copy, within a period of two weeks.

To

The District Munsif, Mettur.

RMT.TEEKAA RAMAN,J.,

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