

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

**C.R.P(NPD) No.372 of 2020
and
C.M.P No.1963 of 2020**

Palanisamy

... Petitioner

Vs.

1.G.K.Mariappan
2.Manickam
3.G.P.Santhakumari
4.Kumar
5.Guru

... Respondents

Prayer :- This Civil revision has been filed under Article 115 of Constitution of India to set aside the order dated 07.08.2019 passed in I.A.No.247 of 2016 in O.S.No.64 of 2013 on the file of the District Munsif, Gobichettipalayam and allow this civil revision petition.

For petitioner : Mr. A.Gokulakrishnan

ORDER

This Civil Revision Petition has been filed challenging the

order dated 07.08.2019 passed in I.A.No.247 of 2016 in

O.S.No.64 of 2013 by the District Munsif, Gobichettipalayam, condoning the delay of 154 days in restoring the suit which was dismissed for default.

2. The 1st respondent/plaintiff has filed a suit in O.S.No.64 of 2013 on the file of the District Munsif, Gobichettipalayam seeking for permanent injunction restraining the defendants from interfering with his possession and also for mandatory injunction to restore the 3rd item of the suit properties to its original position. Pending suit, the 1st defendant has filed an application in I.A.No.694 of 2013, under Order VII Rule 11 CPC to reject the plaint in O.S.No.64 of 2013. While the said application is pending, the said suit was dismissed for default on 04.08.2015 and thereafter, the 1st respondent/plaintiff has filed an application in I.A.No.247 of 2016 to restore the suit with the delay of 154 days. The Court below, by an order dated 07.08.2019, allowed the said application on payment of cost of Rs.2000/-. Challenging the same, the present revision has been filed.

3. Heard the learned counsel appearing for the petitioner.

4. The learned counsel appearing for the petitioner would contend that the suit itself is not maintainable in the eye of law as one of the suit schedule property is the subject matter of the earlier suit in O.S.No.239 of 2002 filed by the petitioner before the District Munsif, Gobichettipalayam and the same was decreed in favour of the petitioner on 29.12.2006. So far as the other relief is concerned, the relief as sought for by the plaintiff is not maintainable. Thereafter, deliberately suppressing the earlier suit filed by the petitioner, the present suit has been filed by the 1st respondent/plaintiff. In the above circumstances, the petitioner has filed an application in I.A.No.694 of 2013, to reject the plaint and it is also pending. In the meanwhile, the suit filed by the 1st respondent/plaintiff was dismissed for default on 04.08.2015 and thereafter, he has filed an application in I.A.No.247 of 2016 in O.S.No.64 of 2013, to restore the suit with the delay of 154 days. Without any valid reason for considering the delay, the trial Court has mechanically allowed the aforesaid petition on payment of cost.

5. I have carefully considered the submissions made by the petitioner and perused the records available on record.

6. The 1st respondent/plaintiff has filed a suit for permanent injunction and also for mandatory injunction in O.S.No.64 of 2013 and the said suit was dismissed for default on 04.08.2015, on the ground of non-payment of batta by the counsel. Subsequently, on receipt of information, the petitioner has filed an application in I.A.No.247 of 2016 to restore the suit with the delay of 154 days. The trial Court, after considering the materials available on record, has allowed the said application in order to give an opportunity to contest the suit in the interest of justice.

7. Considering the fact that the suit has been dismissed for non-payment of batta, for which the plaintiff cannot be blamed. That apart, the delay is only 154 days and the Court below, after considering the same, condoned the delay on payment of cost of Rs.2000/-. It is also stated that the cost was also paid. In the above circumstances, I find no illegality in the order passed by the Court below and find no merits in this revision petition and it deserves to be dismissed.

8. In fine, the Civil Revision Petition is dismissed. No costs. However, considering the application to reject the plaint is pending in I.A.No.694 of 2013, the Court below is directed to dispose of the aforesaid application within a period of four weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is dismissed.

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Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

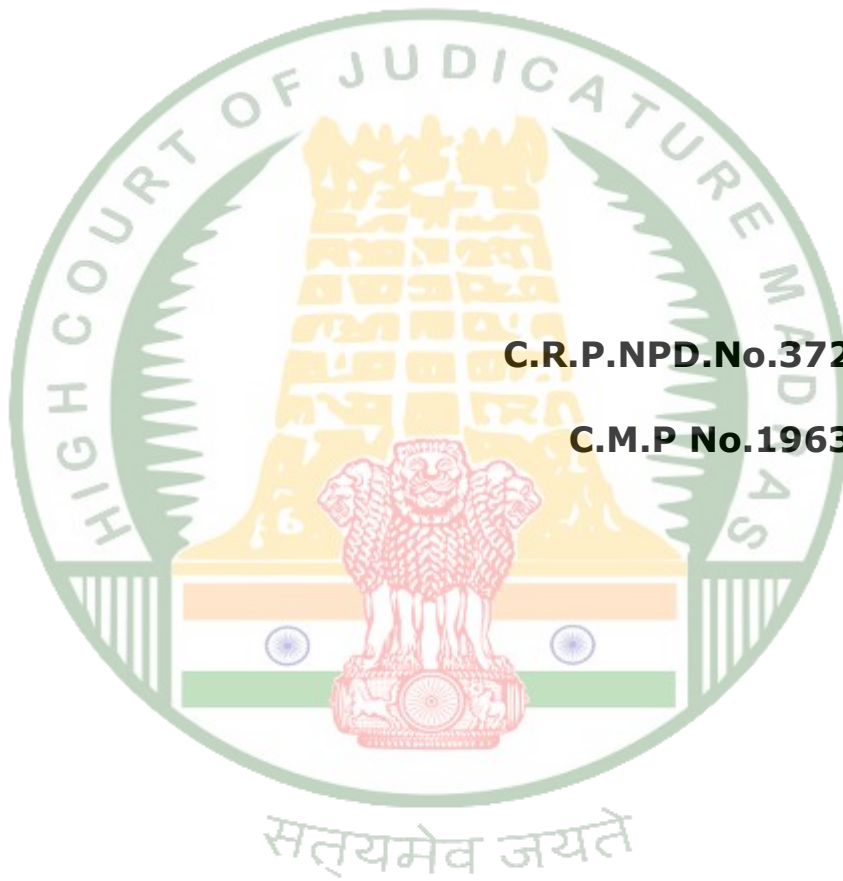
To

The District Munsif, Gobichettipalayam.

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V.BHARATHIDASAN, J.,

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**C.R.P.NPD.No.372 of 2018
and
C.M.P No.1963 of 2020**

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