

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

**C.R.P (PD).No.2726 of 2011
and M.P.No.1 of 2011**

Chinnusamy

...

Petitioner

...Vs...

Ayyamperumal (died)

2. Chinnammal
3. Karthik
4. Poovizhi

(R2 to R4 brought on record as Lrs of the deceased sole respondent by Ayyamperumal vide order dated 13.08.2020 made in M.P.Nos.1 and 2 of 2015 in C.R.P No.2726/2011)

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Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 19.11.2009 passed in C.M.A.No.9 of 2008 on the file of the Sub Court, Mettur in confirming the fair and decreetal orders dated 08.06.2008 passed in I.A.No.436 of 2008 in O.S.No.289 of 2004 on the file of the District Munsif Court, Mettur.

For Petitioner : Mr.P.Mani
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the order dated 19.11.2009 passed in C.M.A.No.9 of 2008 on the file of the Sub Court, Mettur in confirming the order dated 08.06.2008 passed in I.A.No.436 of 2008 in O.S.No.289 of 2004 on the file of the District Munsif Court, Mettur.

2. The case of the petitioner is that the suit has been filed by the respondent against the petitioner in O.S.No.289/2004 on the file of the District Munsif, Mettur for recovery of money. In the said suit, the petitioner was set exparte on 25.01.2008 and therefore he filed an application in I.A.No.436 of 2008 under Order 9 Rule 13 and 151 of Civil Procedure Code to set aside the exparte decree dated 25.01.2008. The said petition was dismissed by the trial Court on 08.06.2008 and therefore challenging the said order passed by the trial Court, the petitioner filed C.M.A.No.9 of 2008 before the Subordinate Court, Mettur. The Subordinate Court dismissed the said Appeal on 19.11.2009. Challenging the said order the petitioner is before this Court by way of this Civil Revision Petition.

2.The learned counsel for the petitioner would submit that though the said suit was decreed on 25.08.2008, immediately without any delay, he filed application to set aside the exparte decree and the said petition was dismissed by the trial Court by observing that no evidence has been produced and no documents have been marked. Challenging the said order passed by the trial Court , the petitioner filed an appeal in C.M.A.No.9 of 2008 before the Subordinate Court, Mettur. The Appellate Court also failed to consider the reasons stated by the petitioner in the affidavit. Now the learned counsel for the petitioner would further submit that the petitioner has not borrowed any money and therefore prays to give him an opportunity to prove his defense. He also prays this Court to impose any conditions and allow this Revision.

3. Heard the learned counsel for the petitioner. Perused the records. Despite the notice being served on the respondents and their names printed in the cause list, there is no representation on their behalf.

4. The respondent filed a suit in O.S.No.289 of 2004 against the petitioner on the file of learned District Munsif,Mettur for recovery of money. Initially, since the petitioner has not filed any

written statement in the suit, the suit was decreed exparte. Therefore, he filed an application to set aside the exparte decree and that was allowed. Thereafter, he filed written statement and after framing of issues the trial commenced and P.W.1 was examined in chief and the case was adjourned for two occasions, for cross examination of P.W.1 but the petitioner has not appeared before the Court. The suit was again decreed as exparte on 25.08.2008 for which the petitioner filed an application within time stating that due to illness, he could not appear as stated by the trial Court and have not produced any oral and documentary evidence in support of the same. In these circumstances considering the affidavit and documents, the Court below dismissed the application filed by the petitioner. Though the learned counsel submitted that opportunity may be given to him to prove his case, this Court feels that despite several opportunities being given to him, he has not chosen to utilise the same to prove his defense.

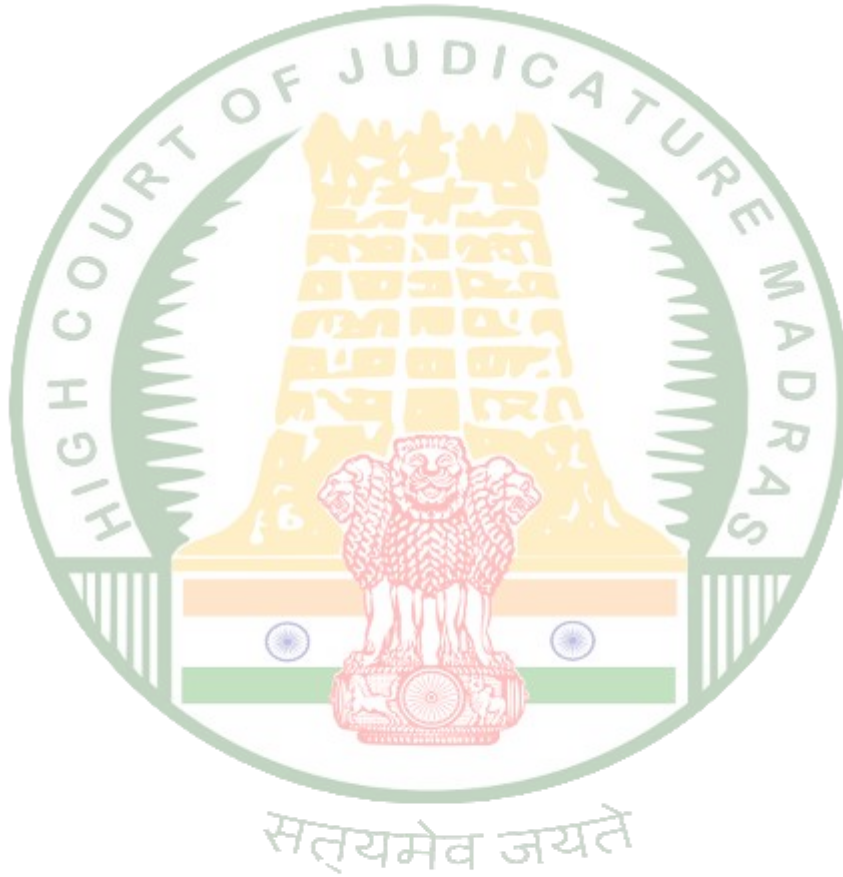
5. Under these circumstances this Court does not find any merits in this Revision. Hence, this Civil Revision Petition stands dismissed. No costs.

19.08.2020

Index : Yes/No
Internet : Yes/No
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To

1. The Sub Court, Mettur
2. The District Munsif Court, Mettur.
- 3.The V.R.Section,High Court, Chennai.

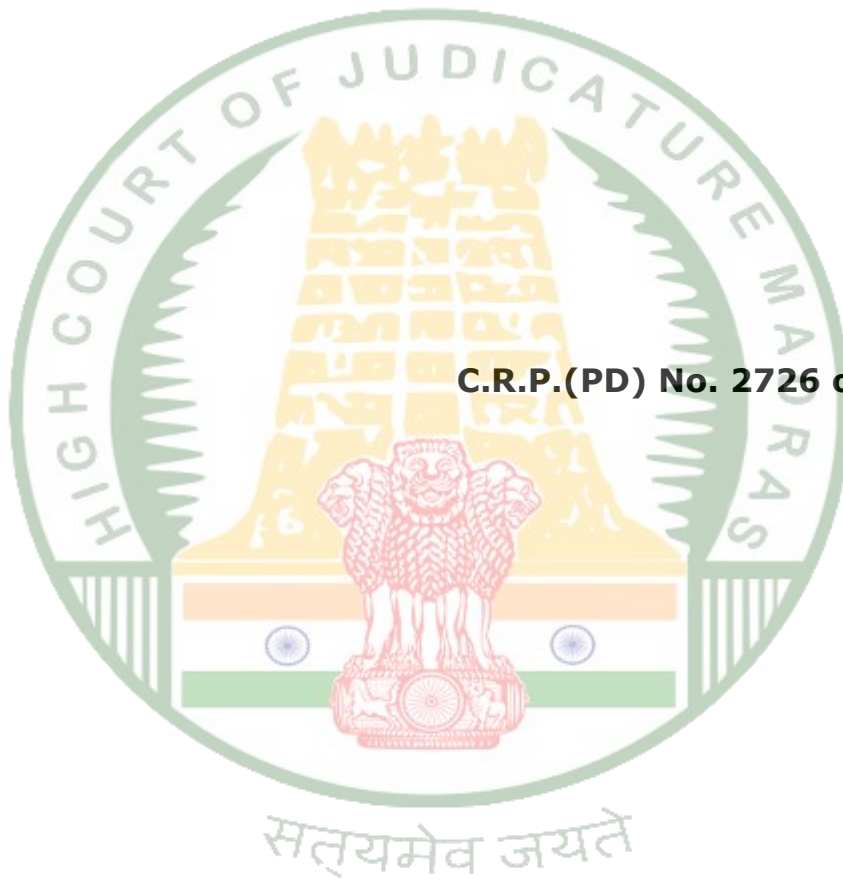


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P. VELMURUGAN, J.

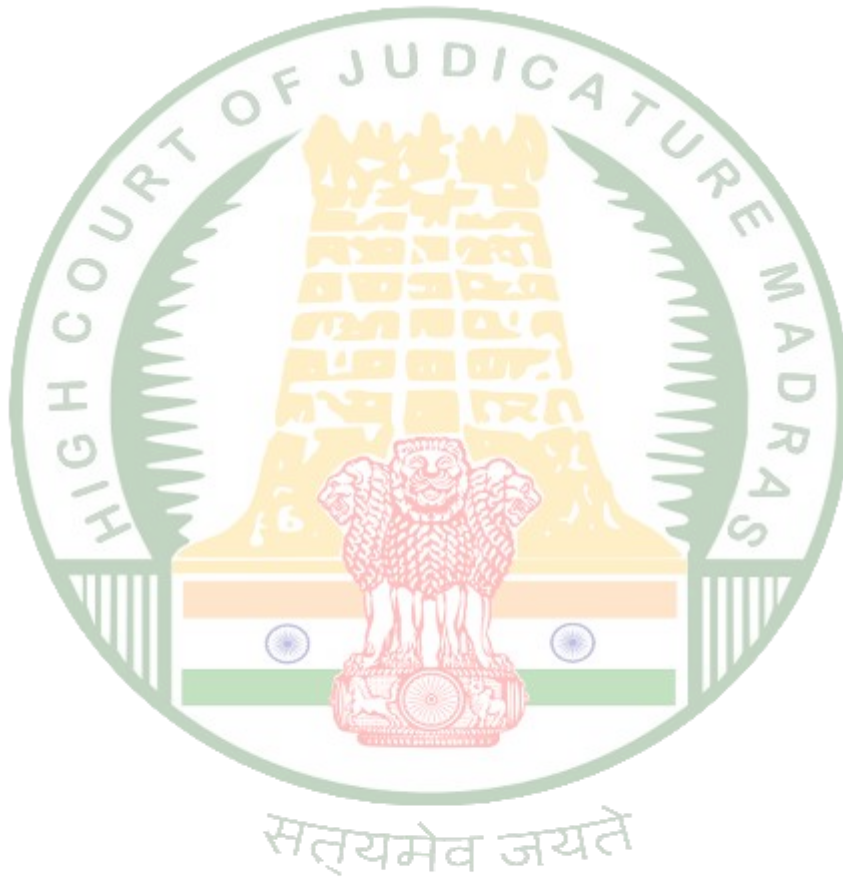
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