

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRP.No. 4977 of 2011
and CMP.Nos. 13491 o 2019, 13494 of 2019 & 13497 of 2019

Thangaraj

..Petitioner/Petitioner/Defendant

Vs

1.Muniappa
2.Chikkappa

..Respondents/Respondents/Plaintiffs

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and executable order passed by the District Munsif-cum-Judicial Magistrate, Denkanikottai in I.A.No. 204 of 2011 in O.S.No. 89 of 2006 dated 13.10.2011.

For Petitioner : M/s.V.Raghavachari

For Respondents : Mr.P.Mani -R1

ORDER

The Civil Revision Petition is filed against the decreetal order in I.A.No. 1320 of 2010 in O.S.No. 251 of 2006 dated 04.10.2010 on the file of the District Munsif, Palladam.

2. The respondent herein has filed a suit in O.S.No. 89 of 2006 against the petitioner for re-conveyance of the suit properties on the basis of suit agreement. The suit notice was also served to the petiitoner and he entered appearance through his counsel in the suit on 31.01.2000 and also filed written statement on 28.12.2006 and after that he did not appear before the court, hence the suit was decreed exparte on 04.06.2007. The respondents filed an Execution Petition before the Execution Court in R.E.P. No.5/2008 in which notice was also service and entered appearance on 20.01.2009. The petitioner has also filed a petition to set aside the exparte decree on 28.06.2010. The trial Court after hearing the matter and not being satisfied with the reasons stated in the affidavit, dismissed the said petition. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that the Court below should have considered that the petitioner/defendant had filed his written statement but to circumstances beyond his control he was unable to contest the case. The learned counsel further submitted that the Court below ought to have been liberal in the consideration of the petition under Section 5 of the Limitation Act.

4. On the other hand, the learned counsel appearing for the respondents submitted that the delay of 1090 days is wanted to drag on the case. The petitioner had filed application in I.A.No. 204 of 2011 only on 28.06.2010. In fact, the respondent/plaintiff filed REP. No. 5/2008 in O.S.No. 89 of 2006 on 26.11.2007 and notice was ordered to the petitioner on 02.06.2008. Many times, the petitioner avoided to receive the court notice. On 20.01.2009, the petitioner filed vakalath in REP.No. 5/2008. Hence, the petitioner was well aware on 20.01.2009 about the decree and judgment. But only on 28.06.2010, the petitioner had filed application under Order 9 Rule 13 of CPC. Therefore, there is no merits in the said application filed by the petitioner and the Court below had rightly dismissed the said application filed by the petitioner.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the documents available on record.

6. Admittedly, the respondent/plaintiff had filed the suit in O.S.No. 89 of 2006 for specific performance of contract against the petitioner herein. The petitioner/defendant had entered into appearance on 31.10.2006 and filed written statement on 28.12.2006. On 04.06.2007, the suit was posted in list for trial, since the petitioner/defendant was called absent, the suit was decreed exparte on the said date. Further, the petitioner has not filed any documents to substantiate his arguments that he has not received any notice from his Counsel. On a perusal of Ex.R1-certified copy of the Execution Application and its docket orders, the petitioner had entered into appearance in the said execution application on 20.01.2009. But the petitioner had filed the petition to set aside the exparte decree only on 30.06.2010. Therefore, it is clear that the petitioner even having knowledge about the exparte decree on 20.01.2009, has come forward to file application to set aside the exparte decree only on 30.06.2010 i.e. after 1 ½ years for which there is no explanation.

7. Considering the facts and circumstances of the case and considering the fact that there is no satisfactory explanation

by the petitioner for the inordinate delay of 1090 days in filing application to set aside the exparte decree, I am of the considered opinion that no reason to interfere with the order passed by the Court below. In my view, the trial Court has rightly exercised the discretionary power and dismissed the application filed by the petitioner. Accordingly, the the present Civil Revision Petition is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

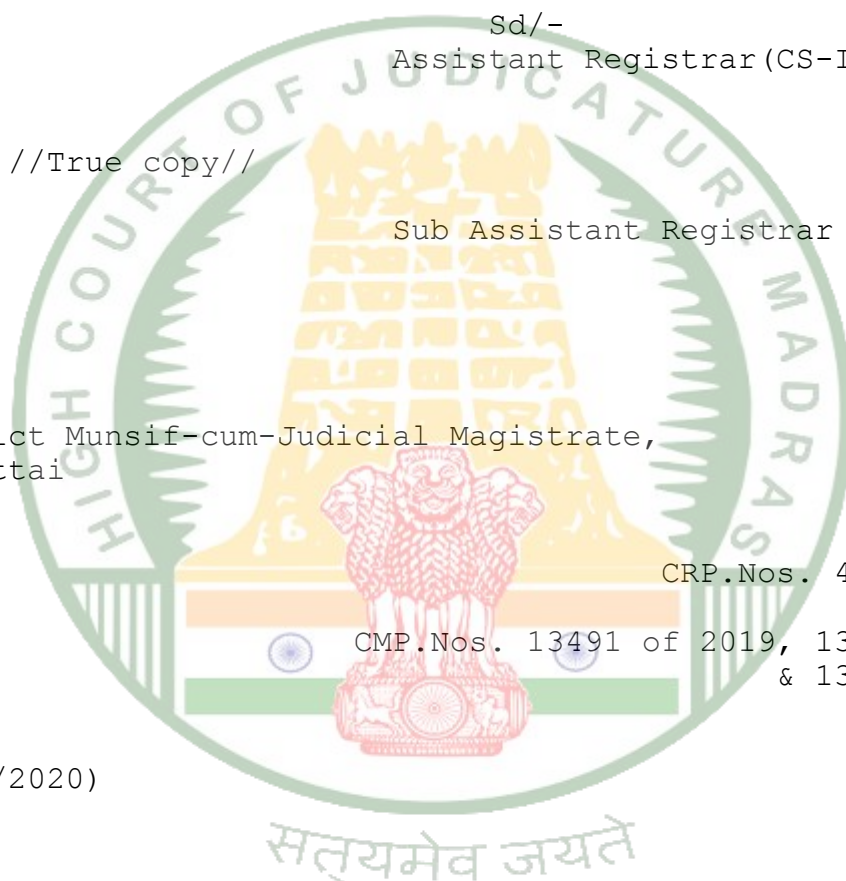
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To

The District Munsif-cum-Judicial Magistrate,
Denkanikottai

CRP.Nos. 4977 of 2011
and
CMP.Nos. 13491 of 2019, 13494 of 2019
& 13497 of 2019

GJ (CO)
GMY (20/08/2020)



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