

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM:

**THE HON'BLE MR.JUSTICE P.RAJAMANICKAM**

C.R.P(NPD).No.1166 of 2015

and

M.P.No.1 of 2015

Peruma Ammal (died)  
Pichandi (died)

1. Kuppu  
2. Sulochana

... Petitioners

Vs.

1. Venkatesan (died)  
(R1 -died, Recorded  
vide court orders dated  
02.12.2020 made in  
CRP.1166 of 2015)

2. Latha  
3. Priyanka

... Respondents

WEB COPY

Prayer: Civil Revision Petition is filed under Section 115 of CPC to set aside the fair and decretal order dated 13.02.2015 in EP.No.56 of 2014 in OS.No.65 of 2006 on the file of the Principal District Munsif Court, Ambur, Vellore District.

For Petitioners : Mr.K.Selvaraj

For Respondents : M/s.N.P.Kumar  
for R2 and R3

**ORDER**

This Civil Revision Petition has been filed by the respondents against the order passed by the Principal District Munsif, Ambur, Vellore District in EP.No.56 of 2014 in OS.No.65 of 2006 dated 13.02.2015.

2. The respondents herein had filed an execution petition in EP.No.56 of 2014 in OS.No.65 of 2006 on the file of the Principal District Munsif, Ambur, Vellore District seeking delivery of possession, based on the decree passed in OS.No.65 of 2006 dated 28.11.2006. The learned District Munsif by the order dated 13.02.2015 had allowed the said execution petition and ordered for delivery of possession of the petition mentioned property. Feeling aggrieved, the respondents therein have filed the present Civil Revision Petition.

3. Heard Mr.K.Selva Raj, the learned counsel for the petitioners and Mr.N.P.Kumar, the learned counsel for the respondents 2 and 3.

4. The learned counsel for the petitioners has submitted that the first respondent herein had filed a suit in OS.No.65 of 2006 on the file of the Principal District Munsif, Ambur, Vellore District against one Peruma Ammal, Pichandi and Kasi for recovery of possession of the suit property. He further submitted that in the said suit, no summons were served on the defendants therein, but, they were set ex-parte and an ex-parte decree was passed on 28.11.2006. He further submitted that the said decree has not been executed immediately. He further submitted that the said Peruma Ammal died on 15.02.2007 and Pichandi died on 30.11.2012 and after the death of the said persons and also the death of the Original Decree Holder viz., Venkatesan, the legal heirs of the said Venkatesan had filed an execution petition in EP.No.56 of 2014 directly impleading the petitioners 1 and 2 herein as legal heirs of the deceased Pichandi. He further submitted that in the said execution petition, the petitioners herein have received notice and only thereafter, they came to know that an exparte decree was passed against the said Peruma Ammal

and Pichandi on 28.11.2006 itself. He further submitted that no summons were served on the said Peruma Ammal and Pichandi in the said suit and hence, the petitioners herein had filed an application to set aside the exparte decree along with an application in IA.No.90 of 2015 to condone the delay of 2966 days for filing petition to set aside the exparte decree. He further submitted that the lower court without taking up the said application in IA.No.90 of 2015, it had disposed of the execution petition and also directed the petitioners therein to pay batta within three days. He further submitted that the petitioners herein are female members and they are not having knowledge about the aforesaid proceedings till they received notice in the execution petition. He further submitted that the petitioners are in possession of the suit property peacefully a very long time even after the death of the said Pichandi and Peruma Ammal and suddenly if they are thrown out of the petition mentioned property, they will suffer a lot and therefore he prayed to allow this Civil Revision Petition with a direction to the trial court to dispose of the application in IA.No.90 of 2015 at early.

5. Per contra, the learned counsel for the respondents has

submitted that this is the second round of litigation. Previously, the original decree holder Venkatesan had filed a suit in OS.No.582 of 1996 for the relief of declaration and permanent injunction. Likewise, the defendants in the said suit also filed a suit in OS.No.519 of 1996 on the file of the District Munsif, Ambur to declare their right over the suit property. The learned District Munsif, Ambur by a common judgment dated 31.07.1998 had dismissed the suit which was filed by the said Venkatesan and decreed the suit which was filed by the defendants . Feeling aggrieved, the said Venkatesan had filed appeals in AS.Nos.33 and 34 of 1998 on the file of the Sub Court, Thirupathur. He further submitted that the learned Sub-Judge, Thirupathur by a Common judgment dated 30.07.2003 had allowed the said appeals and decreed the suit filed by the said Venkatesan and dismissed the suit which was filed by the defendants. He further submitted that after disposal of the said appeals, the defendants forcibly trespassed into the suit property and took possession and hence, the said Venkatesan constrained to file the second suit in OS.No.65 of 2006 on the file of the District Munsif, Ambur for recovery of possession of the suit property. In the said suit, the defendants Peruma Ammal, Pichandi and Kasi after receipt of summons,

entered appearance by engaging a counsel and took adjournments for filing written statement, but, finally, they did not file written statement and they were set exparte and after taking evidence of PW1, the learned District Munsif had decreed the suit as prayed for with costs on 28.11.2006. He further submitted that after passing of the said decree, the said Venkatesan died and the defendants namely Peruma Ammal and Pichandi also died and hence, the respondents herein being the legal heirs of the said Venkatesan had filed an execution petition in EP.No.56 of 2014 by impleading the petitioners 1 and 2 herein who are legal representatives of the defendants Peruma Ammal and Pichandi. He further submitted that in the said execution petition, after receipt of notice, the petitioners herein had entered appearance and filed counter opposing the execution petition on the ground that they did not have any knowledge about the decree passed in OS.No.65 of 2006 against Peruma Ammal and Pichandi. He further submitted that the second petitioner herein was also a party in the previous litigation i.e., in AS.No.34 of 1998 and that being so, she knows the proceedings. He further submitted that since the original defendants Peruma Ammal and Pichandi have died long after passing of the exparte decree, the petitioners 1 and 2 herein

had filed a petition to set aside the exparte decree. He further submitted that only the concerned defendants have to say for not filing written statement within the time granted by the court and it is not open to the legal heirs of the judgment debtors to file a petition stating the reasons as to why the original defendants did not file written statement. He further submitted that since the respondents have been fighting for their property from the year 1996, if this petition is allowed that would cause prejudice to the respondents and they cannot enjoy the fruits of the decree, despite their predecessors got decree twice. He further submitted that the executing court after taking into consideration the aforesaid facts had rightly rejected the objections filed by the petitioners 1 and 2 herein and passed an order of delivery of possession and hence, he prayed to dismiss the Civil Revision Petition.

6. A perusal of the typed set of papers filed by the petitioners shows that one Venkatesan had filed a suit in OS.No.582 of 1996 on the file of the District Munsif, Ambur against one Peruma Ammal, Pichandi and Kasi for the relief of declaration his title over the suit property and for permanent injunction. Likewise, the aforesaid defendants also filed a

suit in OS.No.519 of 1996 on the file of the same court with similar reliefs. The learned District Munsif by a common judgment dated 30.01.1998 had dismissed the suit in OS.No.582 of 1996 and decreed the suit in OS.No.519 of 1996. As against the same, the said Venkatesan had filed appeals in AS.Nos.33 and 34 of 1998 on the file of Sub Judge, Thirupathur. The learned Sub Judge Thirupathur by the order dated 30.07.2002 had allowed both the appeals and decreed the suit in OS.No.582 of 1996 as prayed for and dismissed the suit in OS.No.519 of 1996. After disposing of the aforesaid appeals, the said Venkatesan again filed a suit in OS.No.65 of 2006 on the file of the District Munsif, Ambur for recovery of possession of the suit property on the ground that after disposing of the aforesaid appeals, the defendants namely Peruma Ammal, Pichandi and Kasi had trespassed into the suit property and forcibly took possession. The aforesaid defendants after receipt of summons entered appearance by engaging Advocates namely Thiru N.Gokula and Thiru P.Ramesh Babu and took adjournments, but finally they did not file written statement and remained exparte and thereafter, the learned trial court had passed an exparte decree dated 28.11.2006 directing the defendants therein to hand over possession of the suit

property within two months. After passing of the aforesaid decree, it appears that the said Venkatesan, Peruma Ammal and Pichandi died and hence, the legal heirs of the said Venkatesan namely, the respondents herein had filed an execution petition in EP.No.56 of 2014 impleading the petitioners herein as legal representatives of the judgment debtors Peruma Ammal and Pichandi. The petitioners herein opposed the said execution petition by filing counter. They have stated that only after receipt of notice in the execution proceedings, they came to know about the exparte decree which was passed in OS.No.65 of 2006 against the original defendants Peruma Ammal and Pichandi and hence, they immediately filed an application to set aside the exparte decree along with an application in IA.No.90 of 2015 under Section 5 of the Limitation Act, to condone the delay of 2966 days to set aside the exparte decree.

7. In the affidavit filed in support of his contentions, the first petitioner herein has stated that the original defendants namely Peruma Ammal and Pichandi have died on 15.02.2007 and 30.11.2012 respectively. The aforesaid exparte decree was passed on 28.11.2006. So,

it is clear that the said Peruma Ammal died after three months from the date of passing of the decree and Pichandi died nearly after six years, but, they have not taken any steps to set aside the exparte decree during their life time. Further, the contention of the petitioners herein that the said Peruma Ammal and Pichandi did not receive summons has to be decided in the petition which has been filed under Order 9 Rule 13 of CPC. Admittedly, the petitioners herein have not filed any petition on the original side of the trial court seeking stay of the execution petition till the disposal of the petitions which were filed under Section 5 of the Limitation Act under Order 9 Rule 13 of CPC and that being so, eventhough, both the matters were pending before the same court, on execution side, the court need not keep the execution petition pending. Once, decree is passed, the executing court has to execute the said decree at early. It appears that based on the said principle the executing court had disposed of the execution petition. In the said finding, this Court does not find any irregularity or illegality. Hence, this Civil Revision Petition is liable to be dismissed.

8. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

08.12.2020

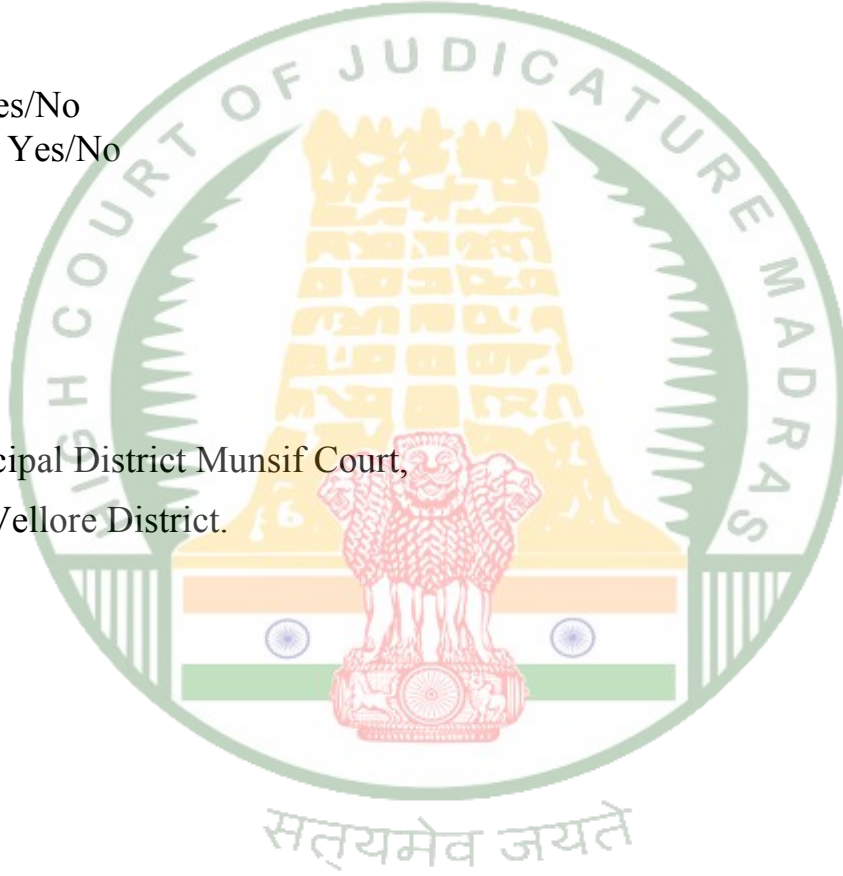
Vv

Index :Yes/No

Internet : Yes/No

To

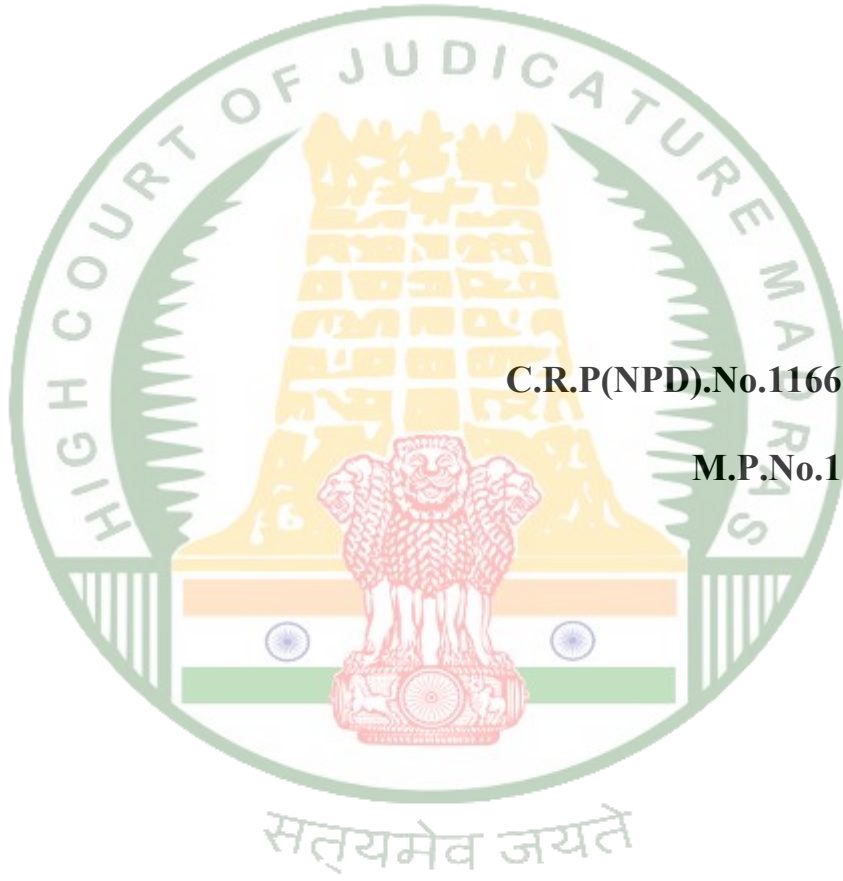
The Principal District Munsif Court,  
Ambur, Vellore District.



WEB COPY

**P.RAJAMANICKAM.J.,**

Vv



**C.R.P(NPD).No.1166 of 2015  
and  
M.P.No.1 of 2015**

**WEB COPY** 08.12.2020