

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.3041 of 2015
and
M.P.No.1 of 2015

1.Mohamed Nasar
2.Fathima Bivi

... Petitioners

Vs.

Mohamed Sadiq Pasha

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order made in I.A.No.448 of 2014 in O.S.No.31 of 2013 by an order dated 07.03.2015 passed by the Learned District Munsif cum Judicial Magistrate, Parangipettai, Cuddalore District.

For Petitioners

: Mr.G.Pugazhenth

For Respondent

: M/s.Vetrivel Rajan

ORDER

This Civil Revision Petition has been filed by the Petitioners/defendants against the dismissal of their Application in I.A.No.448 of 2014 in O.S.No.31 of 2013 on the file of the District Munsif cum Judicial Magistrate, Parangipettai dated 07.03.2015.

2.The petitioners herein had filed an application in I.A.No.448 of 2014 in O.S.No.31 of 2013 on the file of the District Munsif cum Judicial Magistrate, Parangipettai under Section 5 of the limitation Act, to condone the delay of 83 days in filing petition to set aside the ex-parte decree dated 24.03.2014. The learned District Munsif cum Judicial Magistrate had dismissed the said application by the order dated 07.03.2015. Feeling aggrieved, petitioners/defendants have filed the present Civil Revision Petition.

3.Heard Mr.G.Pugazhenthil learned counsel for the petitioners and Mr.Vetrivel Rajan, the learned counsel for the respondent.

4.The learned counsel for the petitioners has submitted that the respondent herein had filed a suit in O.S.No.31 of 2013 on the file of the

District Munsif cum Judicial Magistrate, Parangipettai to declare his title over the suit property and for recovery of possession. He further submitted that in the said suit, the petitioners herein, after receipt of summons entered appearance by filing vakalat and took adjournment for filing written statement. He further submitted that the 1st petitioner is the husband of the 2nd petitioner and he was looking after the matter. He further submitted that the 1st petitioner was suffering from Chicken Pox and hence he could not contact his counsel and give instructions for filing written statement and consequently, the petitioners were set ex-parte and an ex-parte decree was passed on 24.03.2014. He further submitted that only after receipt of notice in the Execution Petition, the petitioners came to know that the ex-parte decree was passed on 24.03.2014 and hence, the petitioners immediately filed a petition to set aside the ex-parte decree along with a petition to condone the delay of 83 days in filing the said petition. He further submitted that the Trial Court, without considering the aforesaid facts had dismissed the application to condone the delay in filing petition to set aside the ex-parte decree. He further submitted that the 1st petitioner and the respondent are brothers and the petitioners are having valid defence in the suit and hence he prayed to grant an opportunity to the petitioners to contest the suit and

therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned Trial Court in I.A.No.448 of 2014 in O.S.No.31 of 2013 and allow the said application.

5.Per Contra, the learned counsel for the respondent has submitted that the petitioners, after receipt of the summons in the said suit, entered appearance through their counsel and took adjournments for filing written statement and even though four months time have been given, the petitioners have not filed written statement and they remained ex-parte and after taking evidence on the side of the respondent, the Trial Court had decreed the suit as prayed for with costs. He further submitted that the petitioners have not stated any valid reason for condoning the delay of 83 days in filing petition to set aside the ex-parte decree and taking into consideration the aforesaid facts, the Trial Court had rightly dismissed the said petition and in the said order, this Court need not interfere and therefore he prayed to dismiss the Civil Revision Petition.

6.A perusal of the typed set of papers filed by the petitioners shows that the respondent herein had filed a suit in O.S.No.31 of 2013 on the file of the District Munsif cum Judicial Magistrate, Parangipettai, for

the relief of declaration of his title and for recovery of possession of the suit property. The petitioners herein after receipt of the summons entered appearance through counsel and took adjournments for filing written statement. But they did not file written statement within the time granted by the Court and consequently, they were set exparte and an exparte decree was passed on 24.03.2014. Thereafter, the respondent had filed an Execution Petition in E.P.No.11 of 2014 and only after receipt of notice in the said Execution Petition, the petitioners herein had filed an application to set aside the ex-parte decree along with an application in I.A.No.448 of 2014 to condone the delay of 83 days in filing petition to set aside the ex-parte. The first petitioner had filed an affidavit in support of the I.A.No.448 of 2014, in which he has stated that he was looking after the matters on behalf of the 2nd petitioner also. Further he has stated that he was infected with Chicken Pox and hence he could not give instructions to their counsel for filing written statement in time and that was also the reason for not filing petition to set aside the ex-parte decree in time. Though, the petitioners have not produced any material to substantiate the allegations made in the affidavit that the 1st petitioner was suffering from Chicken Pox, considering the fact that the suit is for declaration of title and delivery of possession and valuable rights are

involved in this case, in order to give one more opportunity to the petitioners, this Court is inclined to allow this petition. However, the petitioners shall compensate the respondent for the inconvenience caused to him.

7.In the result, this petition will be allowed on payment of cost of Rs.2,000/- (Rupees Two Thousand only) to the respondent either directly or through Counsel who is appearing before the Trial Court within three weeks from the date of receipt of a copy of this order, failing which, this petition shall stand dismissed without further reference to this Court. If the petitioners comply with the aforesaid direction within the stipulated period, the Trial Court is directed to number the petition to set aside the ex-parte decree and dispose of the same in accordance with law within a period of one month thereafter and in case the said petition is allowed, the Trial Court shall dispose of the suit also within five months thereafter. Consequently, connected Miscellaneous Petition is closed.

Index: Yes/No

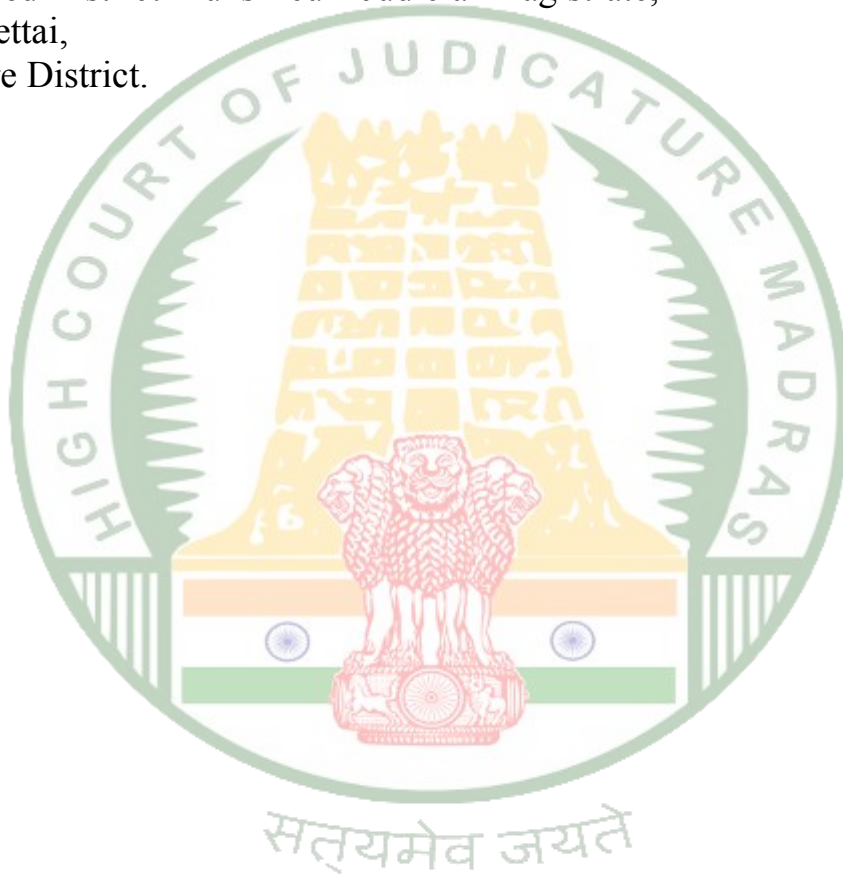
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Note: Issue order copy on or before 09.12.2020

To

The learned District Munsif cum Judicial Magistrate,
Parangipettai,
Cuddalore District.

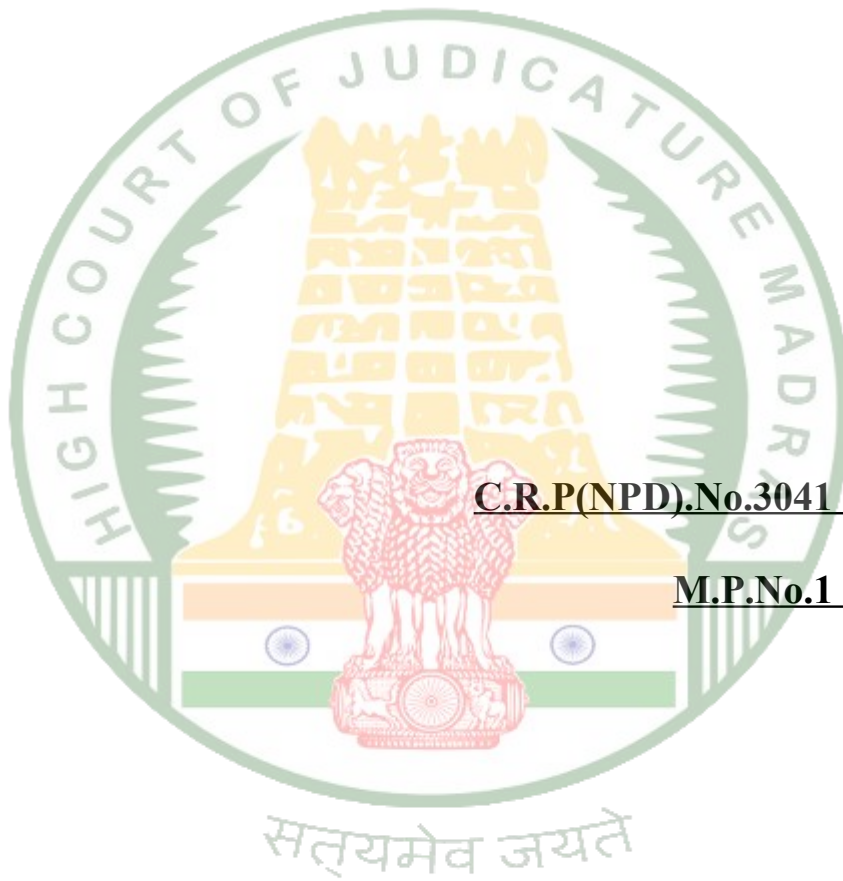


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