

C.R.P.(NPD)No.222 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.222 of 2013
and M.P.No.1 of 2013

Rajiya Muthu

.. Petitioner/Defendant

Vs.

V.Arumugham

.. Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Section 115 of C.P.C. against the fair and decretal order dated 04.11.2011 made in I.A.No.1435 of 2010 in O.S.No.443 of 2002 on the file of the Principal Sub Court, Erode.

For Petitioner : Mr.A.Sundaravadhanan

For Respondent : Mr.T.Gowthaman

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed against the fair and decretal order dated 04.11.2011 made in I.A.No.1435 of 2010 in O.S.No.443 of 2002 on the file of the Principal Sub Court, Erode.

2.The petitioner is the defendant and respondent is the plaintiff in O.S.No.443 of 2002 on the file of the Principal Sub Court, Erode. The respondent filed the said suit for specific performance. The said suit was decreed exparte. The petitioner filed I.A.No.1435 of 2010 to condone the delay of 2013 days in filing the petition to set aside the exparte decree. The learned Judge dismissed the said petition holding that the reason given by the petitioner is not sufficient and is not acceptable.

3.Against the said order of dismissal dated 04.11.2011 made in I.A.No.1435 of 2010 in O.S.No.443 of 2002 , the petitioner has come out with the present Civil Revision Petition.

4.The learned counsel appearing for the petitioner submitted that the learned Judge failed to consider the reason given by the petitioner for delay. The suit summons was not served on the petitioner. The learned Judge without verifying the records dismissed the petition. The respondent obtained ex parte decree in the year 2002 and filed E.P. only in the year 2010. Hence, there was a delay on the part of the petitioner to file a petition to set aside the ex parte decree. The learned counsel appearing for the petitioner further submitted that the respondent has filed the suit after expiry of three years on the reopening day, which shows that the respondent is not having sufficient means. In the plaint, the respondent has stated that value of the sale agreement is Rs.35,000/-, the respondent paid Rs.25,000/- as advance and he has to pay only Rs.5,000/- towards balance sale consideration, which shows that the sale agreement is false and prayed for setting aside the order of the learned Judge and allowing the Civil Revision Petition.

5.The learned counsel appearing for the respondent contended that in the plaint, address of the petitioner was given as mentioned in the registered agreement of sale. He evaded receiving summons in the suit and he was served by paper publication. In the execution petition also, the respondent mentioned the same address of the petitioner as mentioned in the plaint. Notice sent to the petitioner in the E.P to the same address was received by him. The agreement is of the year 1999. Now the value of the property is increased. Only to get more money, the petitioner filed the present petition. The reason given by the petitioner that he has not received summons is not valid and sufficient. The learned Judge considering the same, dismissed the petition. There is no reason to interfere with the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

6.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials available on record.

7.From the materials available on record, it is seen that the petitioner has filed petition to condone the delay of 2013 days in filing the petition to set aside the ex parte decree. According to the petitioner, even though he is residing in the same address for the past 30 years, the suit summons was not served on him. On the other hand, it is the contention of the respondent that the petitioner evaded receiving summons sent to him and he was served by substituted service by effecting paper publication. Notice sent to the petitioner in E.P. was received by him. As rightly contended by the learned counsel appearing for the petitioner, the learned Judge ought to have verified the Court records to find out the reason for not serving the summons given by the bailiff and considered the reasons given by the petitioner for the delay. From the order of the learned Judge, it is seen that the learned Judge has not exercised his power properly in considering the averments made in the affidavit as well as in the counter affidavit filed in support of the petition.

8.Considering the materials on record in its entirety and the nature of the suit, the order of the learned Judge dated 04.11.2011 is set aside and I.A.No.1435 of 2010 is remanded back to the learned Judge for fresh consideration and to pass orders after verifying the Court records. The learned Judge is directed to consider the said petition within a period of three months from the date of receipt of a copy of this order.

9.In the result, the Civil Revision Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

21.09.2020

Index : Yes/No

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To

The Principal Subordinate Judge

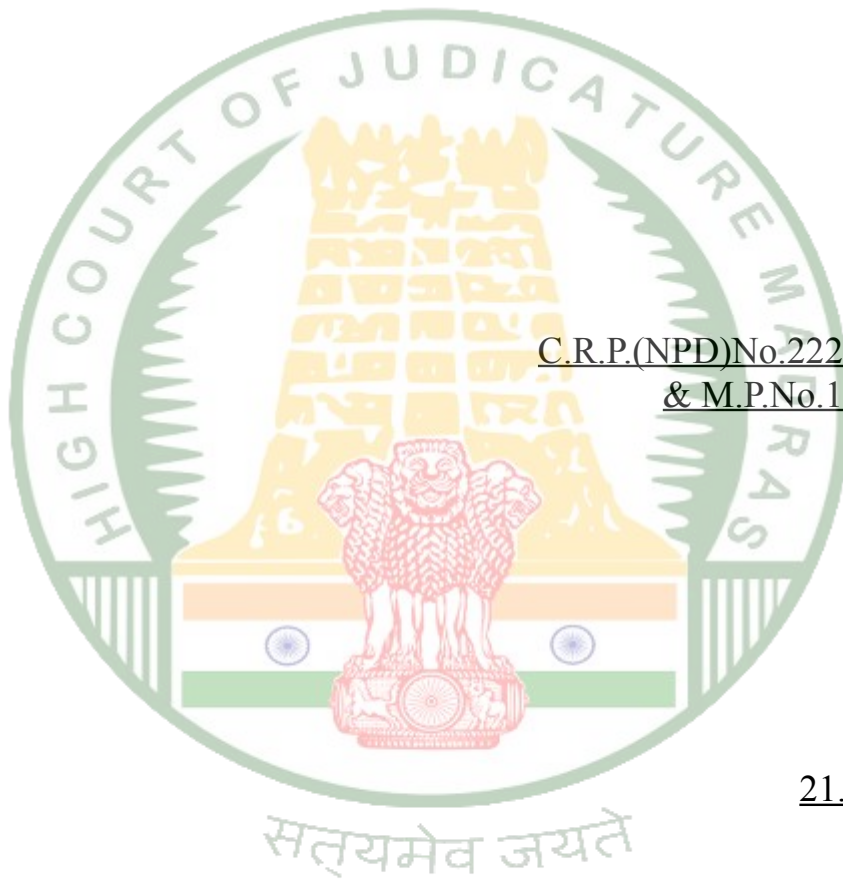
Erode.

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V.M.VELUMANI, J.

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& M.P.No.1 of 2013

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