

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).No.4423 of 2015
and
M.P.No.1 of 2015

1.Shanmugasundaram
2.Lakshmi
3.Saroja

... Petitioners

Vs.

1.Valliyathal
2.N.Thangavel
3.Chinnappagounder

... Respondents

(notice to R3 given up)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 28.07.2015 made in I.A.No.1664 of 2014 in O.S.No.25 of 2007 on the file of the learned District Munsif Court, Kangayam.

For Petitioners : Mr.N.Manokaran
For Respondents : Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition has been filed by the petitioners/defendants against the dismissal of their application in I.A.No.1664 of 2014 in O.S.No.25 of 2007 on the file of the District Munsif, Kangayam, dated 28.07.2015.

2. The petitioners herein had filed an application in I.A.No.1664 of 2014 in O.S.No.25 of 2007 on the file of the District Munsif, Kangayam, under Sections 148 and 151 of CPC, to condone the delay of 1508 days in representing the petition to set aside the exparte decree. The learned District Munsif, by the order dated 28.07.2015 had dismissed the said application. Feeling aggrieved, the petitioners/defendants have filed the present Civil Revision Petition.

3. Heard Mr.N.Manokaran, the learned counsel for the petitioners and Mr.K.Govi Ganesan, the learned counsel for the respondents.

4. The learned counsel for the petitioners has submitted that the respondents herein had filed a suit in O.S.No.25 of 2007 against the petitioners herein for the relief of permanent injunction restraining the petitioners herein from interfering with their peaceful possession and enjoyment of the suit properties. He further submitted that in the said suit, after receipt of the summons, the petitioners herein entered appearance through an advocate and filed the written statement also and when the suit was taken up for trial, the petitioners did not appear and hence, an exparte decree was passed on 07.08.2010. He further submitted that on 17.08.2010 itself, the petitioners herein had filed an application under Order 9 Rule 13 of CPC, to set aside the exparte decree. But, the trial Court had returned the said application on 19.08.2010 pointing out certain defects.

5. He further submitted that after taking back the said petition, the counsel for the petitioners kept the said petition in his office and the said petition mingled with the other case bundles, and hence, the said petition was not represented in time and it was traced out only subsequently and thereafter, it was represented along with a petition to condone the delay of 1508 days but, the learned District Munsif had

erroneously dismissed the said application. He further submitted that the petitioners are having valid defence in the suit and an opportunity may be given to them to contest the suit and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned District Munsif in I.A.No.1664 of 2014 and allow the said application.

6. Per contra, the learned counsel for the respondents has submitted that the petitioners have allowed the suit for passing an exparte decree and thereafter, they filed a petition with defects and hence, the said petition was returned and after taking back, they wantonly kept the petition for more than four years and represented the same along with delay condonation petition without assigning any valid reason and taking into consideration of the said fact, the learned District Munsif, had rightly dismissed the said application and in the said order, this Court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

7. A perusal of the typed set of papers filed by the petitioners would show that the respondents herein had filed a suit in O.S.No.25 of 2007 on the file of the District Munsif Court, Kangeyam,

for the relief of permanent injunction from interfering with their peaceful possession and enjoyment of the suit property. The petitioners herein after receipt of the suit summons, entered appearance through an advocate and filed written statement denying the claim of the respondents herein but when the suit was posted for trial, the petitioners herein did not appear and consequently, an exparte decree was passed on 07.08.2010.

8. Thereafter, on 17.08.2010 the petitioners herein had filed an application under Order 9 Rule 13 of CPC, to set aside the exparte decree and the said petition was returned by the trial Court on 19.08.2010 by pointing out certain defects. The petitioners, after taking back the said petition have not represented the same in time. On the contrary, they have represented the said petition after four years along with the delay condonation petition. The petitioners' counsel filed an affidavit in support of the aforesaid delay condonation petition. In the said affidavit, the said advocate has stated that the papers were mingled in his office and hence, they could not be represented the same in time. Though the reason is not acceptable for condoning the inordinate delay of 1508 days, considering the fact that for the mistake committed by the

counsel, the parties should not be allowed to suffer, this Court is inclined to allow this Civil Revision Petition. However, at the same time, the petitioners have to compensate the respondents for the inconvenience caused to them.

9. In the result, this Civil Revision Petition will be allowed on payment of cost of Rs.10,000/- to the respondents either directly or through their counsel, who appeared before the trial Court within a period of three weeks from the date of receipt of a copy of this order, failing which this petition shall stand dismissed automatically, without further reference to this Court. If the petitioners comply with the aforesaid condition within the stipulated time, the trial Court has to number the petition to set aside the exparte decree and dispose of the same in accordance with law. Consequently, connected Miscellaneous Petition is also closed.

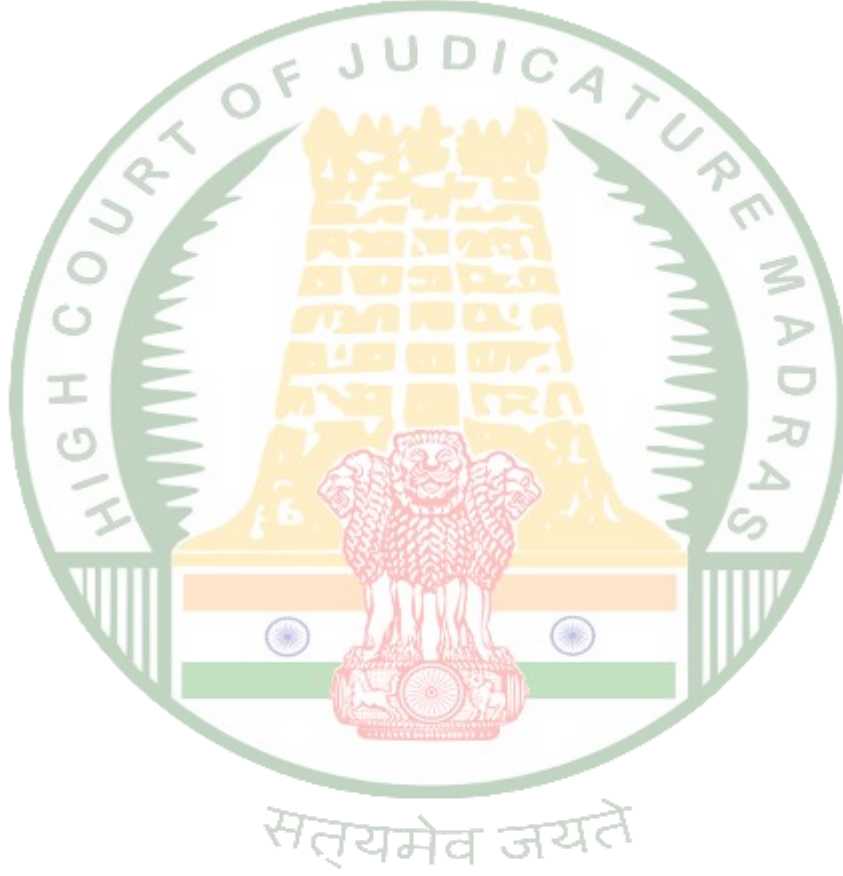
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01.12.2020

Internet : Yes/No
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To

The learned District Munsif Court,
Kangeyam.



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CRP (NPD).No.4423 of 2015

P.RAJAMANICKAM, J.
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