

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.528 of 2018

and

C.M.P.No.2755 of 2018

M.E.Mariyappan

...Petitioner/Plaintiff

Vs.

M.S.Dhanasingh (since Deceased)

1.Sathya Vijaya Kumar

2.Dhanasingh Philomina Farjana

3.D.Rajesh Kumar

4.D.Jaswanth Raj

5.K.Stella Padmini

6.Sharmila Antony Raj

7.D.Naveen Prem Kumar

...Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of Indian, to allow the above Revision in the event of set aside the judgment and decree dated 29.01.2018 passed in CMA.No.84 of 2014 on the file of the XV Additional Judge, City Civil Court, Chennai/FAC of X Additional Judge and confirm the order dated 30.04.2014 in I.A.No.7003 of 2014 in O.S.No.2488 of 2013 passed by the V Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Lakshminarayanan
for Mr.N.Elayaraja,

For Respondents : Mr.S.Baskaran

ORDER

This Civil Revision Petition has been filed against the judgment in CMA.No.84 of 2014 dated 29.01.2018, wherein the learned XV Additional Judge, City Civil Court, Chennai, allowed the Civil Miscellaneous Appeal and vacated the injunction granted in I.A.No.7003 of 2014 in O.S.No.2488 of 2013 on the file of the learned V Assistant Judge, City Civil Court, Chennai. Since the disposal of the Civil Revision Petition is on very narrow point, I do not propose to go into the merits of the rival contentions or the merits of the case.

2. Heard, Mr.V.Lakshminarayanan for Mr.N.Elayaraja, learned counsel appearing for the petitioner and Mr.S.Baskaran, learned counsel appearing for the respondents 3, 4 and 7. The other respondents, though served, have not appeared either in person or through counsel duly instructed.

3. The learned Appellate Judge in para 8 of the judgment has stated as follows:-

“Both the parties not appeared before this Court and also not ready to put forth their oral arguments. Hence, this Court taken as heard.... ”

4. Mr.V.Lakshminarayanan, learned counsel appearing for the petitioner would contend that this statement recorded by the Appellate Court would vitiate its entire judgment relying upon Order 41 Rule 17 of the Code of Civil Procedure which reads as follows:

17. Dismissal of appeal for appellants default:-

Where on the day fixed, or on any other day which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

[Explanation—Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.]

5.He would also invite my attention to the judgments of the

Hon'ble Supreme Court reported in 1996 (6) SCC Page 62, 2012 (8) SCC Page 745 and the judgment in Civil Appeal in C.A.No.9407 of 2019 dated 13.12.2019 and contend that once the appellant is absent, the learned Appellate Court has no other option but to dismiss the appeal and it cannot proceed on merits.

6. In view of the law declared by the Hon'ble Supreme Court it is obvious that the Appellate Court was not right in disposing of the appeal on merits in the absence of the appellant or their counsel. Hence, the order of the learned XV Additional Judge, City Civil Court, Chennai, dated 29.01.2018 is set aside and the appeal is remitted to the Appellate Court for a fresh consideration in accordance with law.

7. With the above direction, this Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

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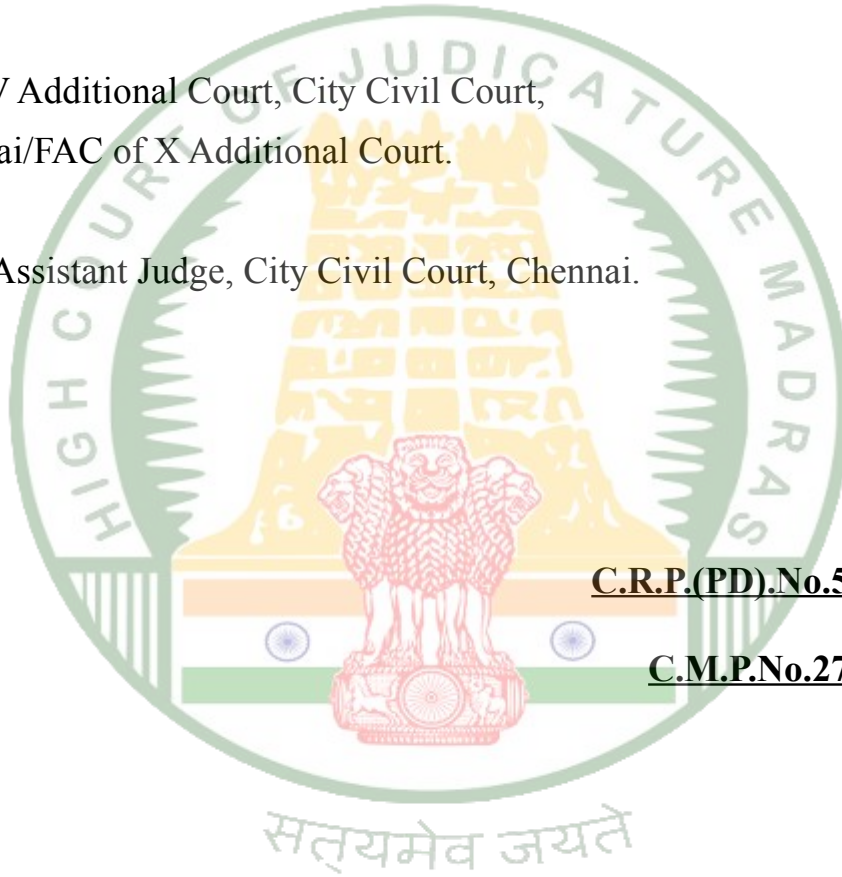
Internet: Yes
Index : No

Speaking order
dna

R.SUBRAMANIAN, J.
dna

To

- 1.The XV Additional Court, City Civil Court,
Chennai/FAC of X Additional Court.
- 2.The V Assistant Judge, City Civil Court, Chennai.



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