

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(NPD).No.1743 of 2019

Minor Kameswaran ... Petitioner

Vs.

1. Kuppammal

2. Selvi

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 18.03.2019 passed in I.A.No.1082 of 2018 in O.S.No.172 of 2013 on the file of the District Munsif Court, Sangarapuram, dismissing the petition filed under Order 9 Rule 9 CPC.

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For Petitioner : Mr. E. Vijay Anand

For respondents : Mr. V.Manohar, for R2
: No appearance, for R1

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioner's application filed under Order 9 Rule 9 CPC to restore the suit.

2. The petitioner herein filed a suit in O.S.No.172 of 2013 on the file of the District Munsif Court, Sankarapuram, for declaration and also for consequential injunction restraining the defendant from interfering with the petitioner's possession and enjoyment of the suit property and the said suit came to be dismissed for non appearance of the petitioner/plaintiff on 02.02.2018. Thereafter, the petitioner had filed an application in I.A.No.1082 of 2018 under Order 9 Rule 9 CPC to restore the suit

and the same was dismissed by the learned Judge on 18.03.2019. Now, challenging the same, the present revision has been filed.

3. The learned counsel for the petitioner would submit that the suit was filed in the year 2013 and the petitioner has been continuously appearing in the suit, on 02.02.2018 the suit was posted for hearing, but the date of hearing was not informed by the counsel to the petitioner. Hence, he could not appear before the trial Court and he was called absent and the suit was dismissed for default on 02.02.2018. Immediately, on 09.02.2018 the petitioner has filed an application to restore the suit, but the trial Court dismissed the same.

4. The learned counsel for the second respondent would submit that the petitioner has deliberately failed to appear before the trial court and hence the suit was dismissed for default. But, the petitioner filed the application to restore the

suit only on 03.04.2018 without filing any application to condone the delay. That apart, on filing the application, the petitioner has become major and without filing any application to declare him as Major, the suit has been conducted by the guardian.

5. I have considered the submissions made on either side and perused the materials available on records carefully.

6. From the perusal of the records, it could be seen that the suit is pending from the year 2013 and the matter was posted for trial on 02.02.2018. According to the petitioner, since the date of hearing was not informed by the counsel, he could not appeared on 02.02.2018. From the records, it could also be seen that he has filed an application on 09.02.2018 within a period of one week. Thereafter, the application has been returned for certain compliance and it was represented on 03.04.2018. Hence, the contention of the respondent that the application was filed only on 03.04.2018 is not correct. From the affidavit filed

by the petitioner, it could be seen that, there is no malafide intention on the part of the petitioner to drag on the proceedings and the application to restore the suit has also been filed within a period of one week from the date of dismissal of the suit. The trial Court without considering the said aspects has erroneously dismissed the application.

7. So far as the next ground stated by the trial Court that earlier, the petitioner has filed suit as minor, but, on the date of filing the application, he has become major and without filing any application to declare him as major to conduct the suit, the application to restore the suit was filed only by his guardian and hence, the application is not maintainable. Even assuming that the petitioner/plaintiff has become major, non filing of application to declare him as a major cannot be a ground to dismiss the application to restore the suit, which was dismissed for default . Unless the suit is restored, the petitioner cannot file application to declare him as major. Hence, on that reason, the application cannot be dismissed.

8. In the result, the Civil Revision Petition is allowed and the order passed by the trial Court is set aside and the suit is restored on file. No costs. Since the suit is pending from the year 2013, the trial Court is directed to proceed with the trial and dispose the same within a period of three(3) months from the date of receipt of a copy of this order.

02.01.2020

Index:Yes/No
Internet:Yes
Speaking/Non-speaking order
mrp

Note:Issue order copy on 30.01.2020

To

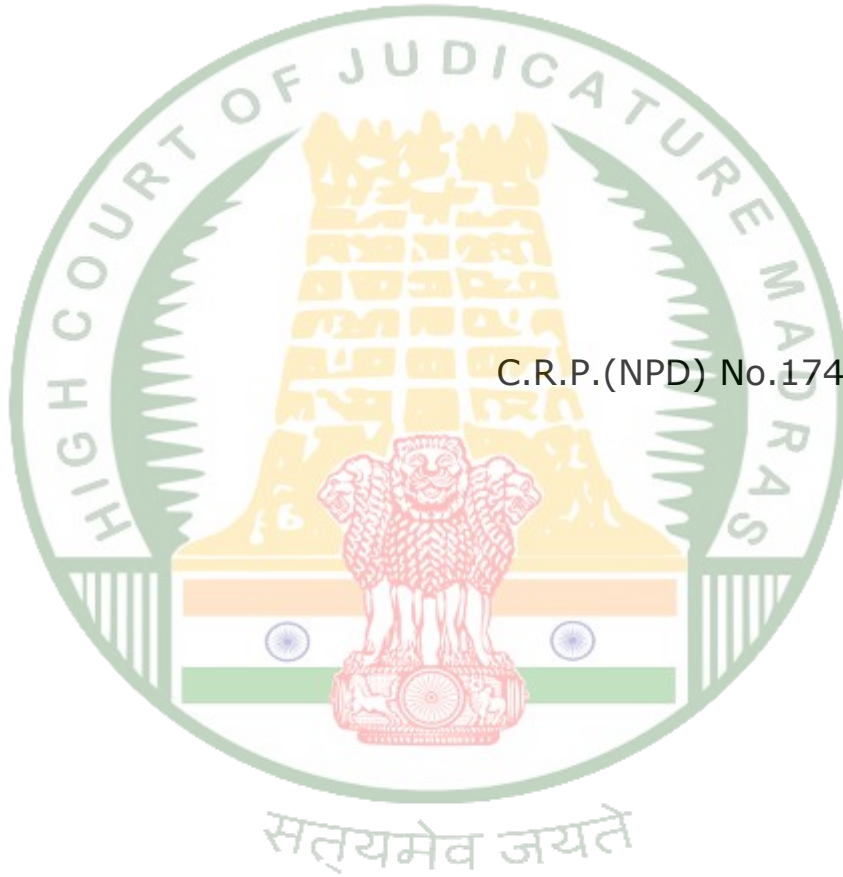
The District Munsif Court,
Sangarapuram.

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V.BHARATHIDASAN, J

mrp



C.R.P.(NPD) No.1743 of 2019

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7/7