

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (NPD), No. 3389 of 2014
and M.P. No. 1 of 2014

1.Sellaravutha Gounder
2.Sellammal
3.Ravikumar
4.Sangeetha
5.Radha

... Petitioners

Vs

1.V.M. Chinna Gounder
2.Easwaran
Rep. By his Power of Attorney Holder,
V.M.Chinna Gounder

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 14.08.2014 made in I.A. No. 45 of 2012 in O.S. No. 174 of 2009 on the file of the II Additional District Munsif Court, Bhavani.

For Petitioners : Mr. T. Murugamanickam,
Senior Counsel
for Mrs. Zeenath Begum

For Respondents : Mr. T. D. Vasu
for M/s. R.T. Doraisamy

ORDER

The matters is heard through "Video Conferencing".

This Civil Revision Petition is filed to set aside the fair and decretal order dated 14.08.2014 made in I.A. No. 45 of 2012 in O.S. No. 174 of 2009 on the file of the II Additional District Munsif Court, Bhavani.

2. The petitioners are defendants 1 to 5 and respondents are plaintiffs in O.S. No. 174 of 2009 on the file of the II Additional District Munsif Court, Bhavani. The respondents filed the said suit for recovery of possession and other reliefs against the petitioners and three others. The suit was decreed exparte on 21.04.2010. The respondents filed E.P. No.22 of 2010 for recovery of possession. The petitioners were set exparte by the order dated 30.07.2010

and exparte order was passed in E.P. also. The petitioners filed I.A. No. 45 of 2012 in O.S. No. 174 of 2009 to condone the delay of 676 days in filing a petition to set aside the exparte decree. The respondents opposed the said petition. By the order dated 14.08.2014, the learned Judge dismissed the said I.A. No. 45 of 2012.

3. Against the said order of dismissal dated 14.08.2014 made in I.A. No.45 of 2012 in O.S. No. 174 of 2009, the petitioners have come out with C.R.P. (NPD). No. 3389 of 2014.

4. Learned Senior Counsel appearing for the petitioners elaborately made submissions on merits and referred to earlier proceedings filed in the typed set of papers and contended that the petitioners came to know the exparte decree dated 21.04.2010 made in O.S. No. 174 of 2009 and exparte order passed in E.P. No.22 of 2010 only on 12.03.2012, when the Court officials came to the suit property to take possession. The learned Judge failed to consider the evidence of R.W.2 to R.W.4 properly. They did not affix any suit summons in the residence of the petitioners. R.W.2 to R.W.4 have not

stated in the presence of whom they have affixed suit summons and their evidence will clearly show that they have not affixed the suit summons and notice in the E.P, as contemplated in the provisions of C.P.C. R.W.2 to R.W.4 have not stated as to who identified the petitioners and have not filed any affidavit with regard to service of summons and notice. It is unbelievable that all the parties have refused the suit summons. The vested rights of the petitioners were affected by refusing to condone the delay. The decree obtained by the respondents is inexecutable and prayed for setting aside the order passed in I.A. No.45 of 2012 and allowing the Civil Revision Petition.

5. Per contra, Mr. T.D. Vasu, learned counsel representing M/s. R.T. Doraisamy, learned counsel appearing for the respondents contended that the petitioners and other defendants were aware of the suit proceedings as they refused to receive the suit summons when the same was sought to be served on them by the Bailiff. The Bailiffs were examined as R.W.2 to R.W.4 and they have categorically stated in chief as well as in cross-examination that petitioners and other defendants refused to receive the suit summons and notice in E.P . In the affidavit filed in support of the petition to condone the

delay, the petitioners have not stated that suit summons were not served on them. The learned Judge considering the entire materials on record, dismissed I.A. No 45 of 2012. There is no irregularity or illegality in the order of the learned Judge warranting interference by this Court and prayed for dismissal of the revision petition.

6. Heard the learned counsel appearing for the petitioners as well as the respondents and perused the materials available on record.

7. The petitioners who are the defendants 1 to 5 suffered an exparte decree dated 21.04.2010. The respondents filed E.P. No. 22 of 2010 for execution of decree passed in O.S. No. 174 of 2009. In the said E.P. also, the petitioners remained exparte and exparte order was passed. According to the petitioners, they came to know about the exparte decree in O.S. No.174 of 2009 as well as exparte order in E.P. No.22 of 2010 only when Court officials came to take possession of the suit property. As rightly pointed out by the learned counsel appearing for the 1st respondent, the petitioners have not stated in the affidavit filed in support of the above petition that suit summons

were served on them. They have only stated that they had knowledge only on 12.03.2012 when the Court officials came to take possession. It is not the case of the petitioners in the affidavit that the suit summons were not served on them. Their only contention in the affidavit is that if delay is not condoned, they will be put to irreparable loss and hardship.

8. From the records, it is seen that the Bailiff of the Court have been examined as R.W.2 to R.W.4. They have stated that the petitioners refused to receive the suit summons after the Bailiff explained contents of suit summons to them. R.W.2 to R.W.4 also stated that they met Village Administrative Officer who sent the Village Assistant to house of the petitioners and in the presence of Village Assistant, the petitioners refused to receive the suit summons. They have also stated that suit summons were affixed in the presence of Village Assistant. The learned Judge considering the averments in the affidavit, counter affidavit and evidence of R.W.2 to R.W.4, dismissed the I.A., holding that the petitioners have not made out any case for condoning the delay, there is no reason to condone the delay and petitioners have filed petition only to drag on the proceedings. Only in the grounds of

appeal, the petitioners have stated that they were not served the suit summons.

9. For the above reason, the Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

21.09.2020

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Index: Yes/No

To

The II Additional District Munsif,
Bhavani.

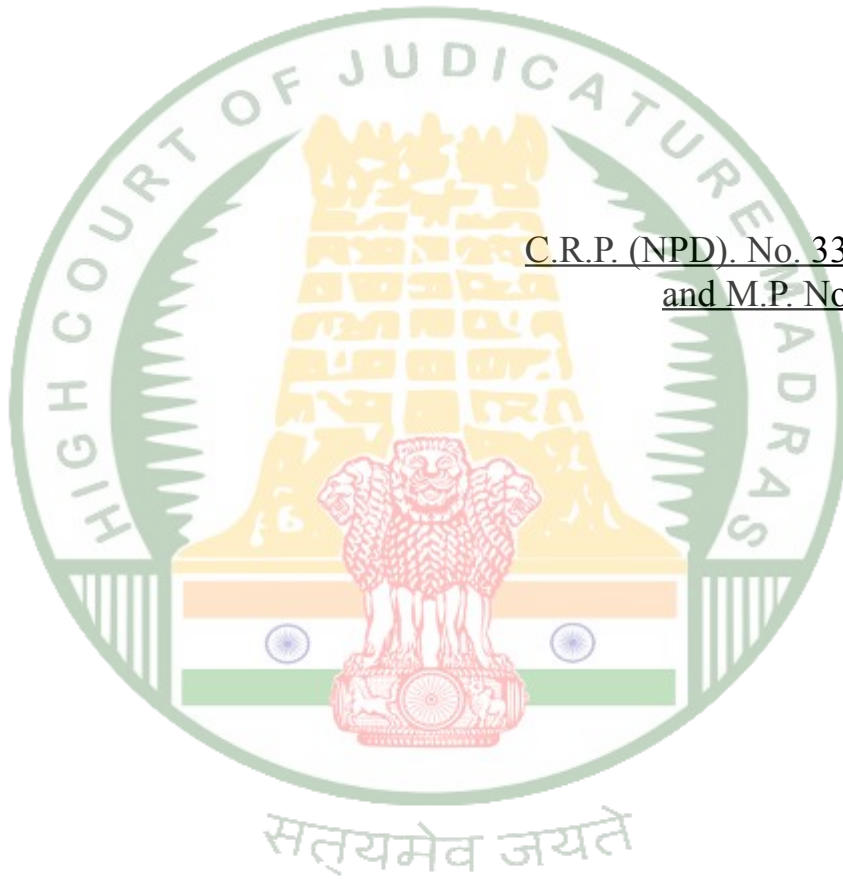


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V.M.VELUMANI,J.

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