

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.884 of 2017
& C.M.P.No.4359 of 2017

Yuvaraj

.. Petitioner/Defendant

Vs.

Annam

.. Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.02.2016 made in I.A.No.150 of 2014 in I.A.No.1509 of 2011 in O.S.No.342 of 2009 on the file of the Principal District Munsif Court, Villupuram.

For Petitioner : Mr.C.Munusamy

For Respondent : No appearance

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed against the fair and decretal order dated 06.02.2016 made in I.A.No.150 of 2014 in I.A.No.1509 of 2011 in O.S.No.342 of 2009 on the file of the Principal District Munsif Court, Villupuram.

2.The petitioner is the 2nd defendant and respondent is the plaintiff in O.S.No.342 of 2009 on the file of the Principal District Munsif Court, Villupuram. The respondent filed the said suit for partition. The petitioner was set exparte on 17.06.2010 and exparte decree was passed on 13.07.2010. The respondent filed I.A.No.1509 of 2011 under Order XXVI Rule 13 and 14 of C.P.C. for appointment of Advocate Commissioner to divide the suit properties as per preliminary decree, to allot 1/4th share to the respondent, to file report and plan and to pass final decree. The petitioner did not file counter affidavit and was set exparte and exparte order was passed on 18.11.2011. At that stage, the petitioner

filed I.A.No.150 of 2014 in I.A.No.1509 of 2011 in O.S.No.342 of 2009 under Order IX Rule 7 C.P.C. to set aside the exparte order dated 18.11.2011. According to the petitioner, he is residing permanently in the address given in the plaint. He has not received any notice or summons. He came to know through his Advocate that he was set exparte on false averment and exparte order was passed on 18.11.2011. The respondent filed counter affidavit and opposed the same. The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the petition.

3. Against the said order of dismissal dated 06.02.2016 made in I.A.No.150 of 2014 in I.A.No.1509 of 2011, 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 that in the suit filed by the respondent for partition and in I.A.No.1509 of 2011, no summons and

notice were served on the petitioner. The petitioner has filed a petition under Order IX Rule 13 C.P.C to condone the delay in filing the petition to set aside the exparte decree and the learned Judge erroneously dismissed the present petition filed under Order IX Rule 7 C.P.C. without considering the petition filed under Order IX Rule 13 C.P.C. The learned counsel appearing for the petitioner further contended that the learned Judge has considered only the petition filed under Order IX Rule 7 C.P.C. to set aside the exparte order passed in final decree. The petition for final decree was based on the exparte preliminary decree and the petitioner must be given an opportunity to put forth his case on merits. The order of the learned Judge is unsustainable, liable to be set aside and prayed for allowing the Civil Revision Petition.

5.Though notice was served on the respondent and her name is printed in the cause list, there is no representation either in person or through counsel.

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

7.From the materials available on record, it is seen that the petitioner was set exparte in O.S.No.342 of 2009 and exparte decree was passed on 13.07.2010. Based on the exparte decree, the respondent has filed I.A.No.1509 of 2011 for appointment of Advocate Commissioner. In the said petition also, the petitioner was set exparte and Advocate Commissioner inspected the property and filed report along with plan. The petitioner filed I.A.No.150 of 2014 to set aside the exparte order passed in the final decree stating that no summons or notice were served on the petitioner and he did not refuse to receive the summons or notice. According to the petitioner, he also filed petition to condone the delay in filing the petition to set aside the exparte decree and the learned Judge did not consider the said petition.

8.From the order of the learned Judge, it is seen that report of the

bailiff is filed into the Court to the effect that the petitioner refused to receive the notice, when it was sought to be served on him and notice was affixed in the house of the petitioner. Further, it is seen from the order of the learned Judge that notice sent by the Advocate Commissioner was returned. Considering the fact that in the petition for final decree for division of property in partition suit, it will be in the interest of justice to give an opportunity to the petitioner with regard to the division of property. At the same time, in view of Ex.C1/notice, the petitioner would be put on cost.

9. For the above reasons, the order of the learned Judge is liable to be set aside and it is hereby set aside on condition that the petitioner pays a sum of Rs.2,000/- (Rupees Two thousand only) to “Prasanthi old age Welfare Home” in SB Account No.2604 101 000 307, Canara Bank, Nandanam Branch, Chennai-35 bearing IFSC Code CNRB 0002604, within a period of four weeks from the date of receipt of a copy of this order. Failure on the part of the petitioner to pay the cost, the order of the

learned Judge shall stand confirmed.

10. The Civil Revision Petition stands allowed on the above terms.

Consequently, connected Miscellaneous Petition is closed. No costs.

14.09.2020

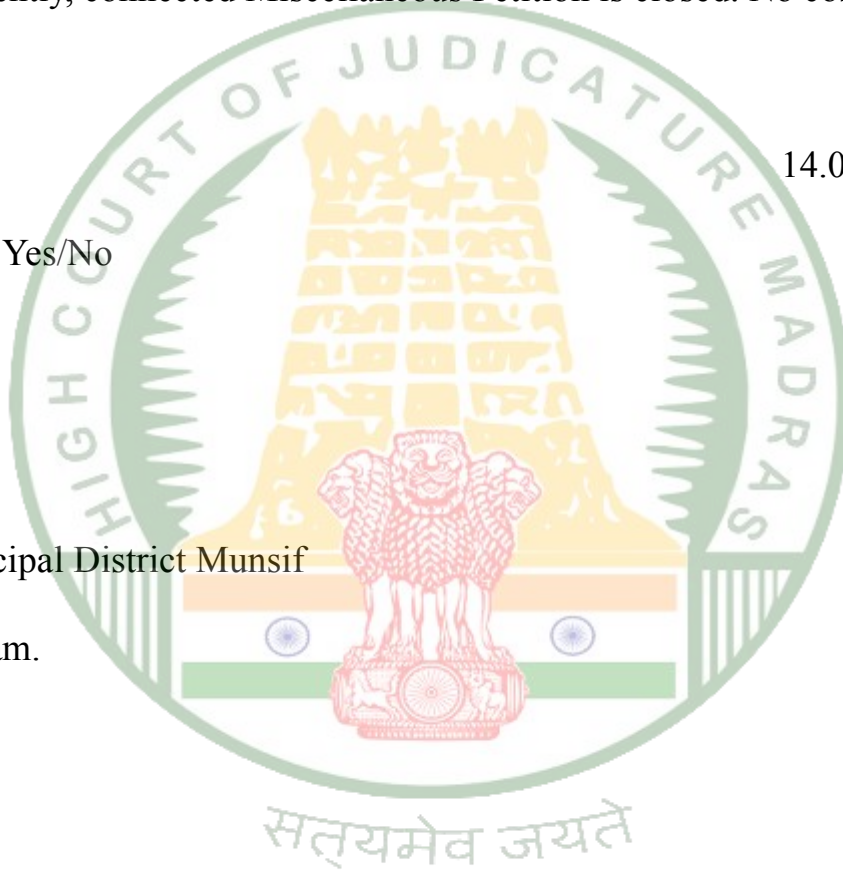
Index : Yes/No

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To

The Principal District Munsif

Villupuram.

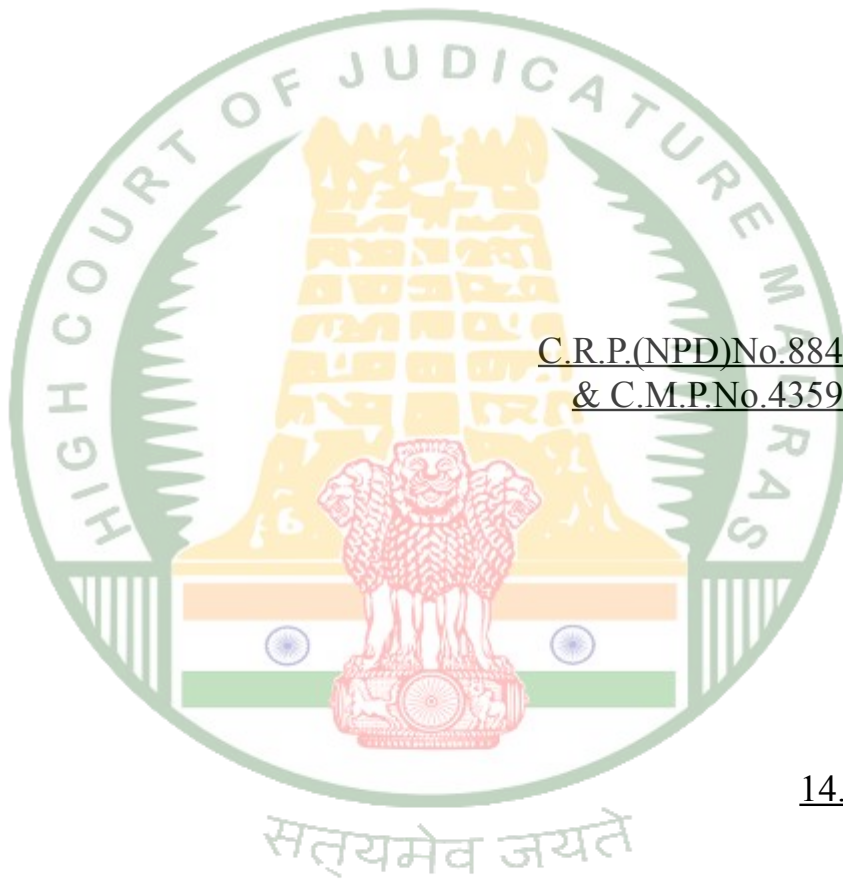


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