

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM: THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

CRP(NPD) No.3682 of 2018
and CMP.No.20507 of 2018

Kumaravel (Deceased)
1.Anandhan

..... Petitioners / Appellants/
Petitioners / Defendants
[Cause title accepted Vide Court order dated
24.10.2018 made in CMP.No.17925/2018 in
CRP.SR.No.73280 of 2018]

Vs.

1.Thilagavathy
2.Mayavel
3.Manivel

..... Respondents / Respondents /
Respondents / Plaintiffs

Prayer : Civil Revision Petition filed under Section 115 of CPC, praying to set aside the judgment and decree passed by the learned Sub Judge, Chidambaram in C.M.A.No.12 of 2015 dated 06.01.2018 consequently setting aside the fair and decreetal order passed by the learned Additional District Munsif, Chidambaram in I.A.No.26 of 2015 in O.S.No.166 of 2007, dated 08.07.2015 and allow the Civil Revision Petition

For Petitioner : Mr.T.Saravanan
For Respondents : Mr.A.Muthukumar

ORDER

The defendant in O.S.No.166 of 2007, whose application seeking to set aside the exparte decree passed in the suit on 01.12.2014 was dismissed by the trial Court, upon its affirmation by the Appellate Court in CMA.No.12/2015, has come up with this Civil Revision Petition.

2. The suit in O.S.No.166/2007 was filed for permanent injunction. It appears that two Commissioners were appointed in

the said suit, and the second Commissioner who was appointed, has left the profession on being appointed as a judicial officer, and hence, a third application for appointment of another Commissioner was filed on 01.12.2014. Unfortunately, on the same day, an exparte decree came to be passed in the suit. Almost immediately thereafter, an application was filed in I.A.No.26 of 2015 seeking to set aside the exparte decree. The reason assigned in the affidavit filed in support of the said I.A.No.26/2015 is that the petitioner was laid up with fever and therefore, he was unable to attend the Court. This application came to be dismissed by the trial Court on the ground that the petitioner is protracting the litigation and on that ground he has filed an application seeking appointment of another Commission on 01.12.2014 and therefore, his claim that he is unwell on the said day, cannot be true. Aggrieved, the petitioner preferred an appeal in CMA.No.12/2015. The Appellate Court also concurred with the findings of the trial Court and dismissed the appeal. In the meantime, the first petitioner Kumaravel had died and therefore, the second petitioner / second defendant has come up with this Civil Revision Petition.

3. I have heard Mr.T.Saravanan, learned counsel for the petitioner and Mr.A.Muthukumar, learned counsel for the respondent.

4. The sole reason on which both the Courts have dismissed the application filed to set aside the exparte decree is on the ground that the defendants have attempted to drag the proceedings and they have also filed an application seeking appointment of Commissioner on 01.12.2014, i.e., the date on which the exparte decree came to be passed. I am unable to accept the reasonings of the Courts, particularly when it is an admitted fact that the second Commissioner appointed in the suit was appointed as judicial officer and therefore, he could not carry out the warrant issued to him. Therefore, the petitioners therein cannot be faulted for filing the third application for appointment of Commissioner. While it is true that the application was filed on 01.12.2014, it is not clear as to when the affidavit was sworn to by the first petitioner. The Courts have assumed that the filing of the application on 01.12.2014 itself would show that the first petitioner was doing well on the said date. There is nothing on record to rule out the possibility of the deceased first petitioner having signed the affidavit a day or two earlier and the petition having been filed on 01.12.2014. The suit is one for permanent injunction and the petitioner is diligently prosecuting the suit. The application to set aside the exparte decree is also filed in time. The assumption based on which the Courts have dismissed the application warrants interference in my considered opinion. Therefore, I have no hesitation in allowing this revision

petition. Further, considering the stage of the suit, the trial Court shall do well to dispose of the suit on priority basis at the earliest.

5. Hence, this Civil Revision Petition is allowed, the order in CMA.No.12/2015 is set aside. I.A.No.26/2015 will stand allowed and the exparte decree dated 01.12.2014 will stand set aside. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

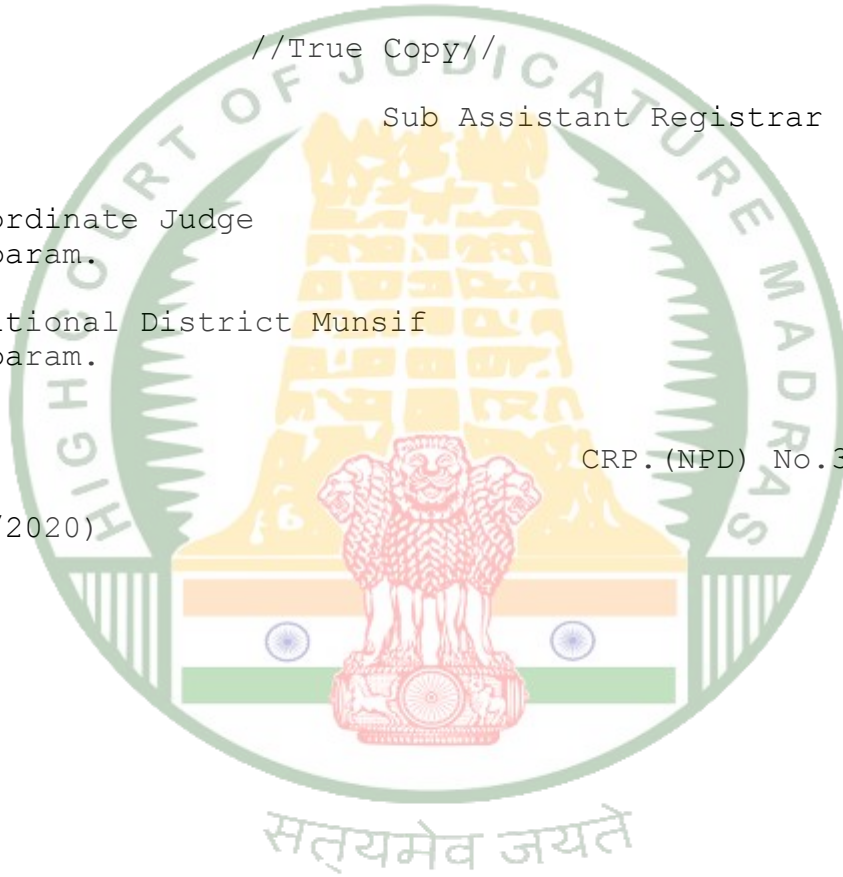
To:

1.The Subordinate Judge
Chidambaram.

2.The Additional District Munsif
Chidambaram.

KS (CO)
RMP (14/10/2020)

CRP. (NPD) No.3682 of 2018



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