



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No. 2633 of 2015 (NPD)
and M.P. (MD) No. 2 of 2015

Petchiammal (Died)

1. Murugan
2. Petchimuthu
3. Arumugam

... Petitioners/Petitioners/Defendants

vs.

Marichamy Pillai (Died)

Lakshmi (Died)

1. Ravindran
2. Guruvammal
3. Selvam
4. Gurusamy

(Amended as per Order in I.A. No.158 of 2013 on 06.08.2013)

...Respondents/Respondents/Plaintiffs

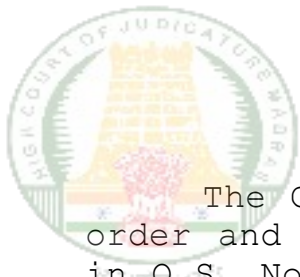
(Cause title accepted as per Order, dated 02.12.2015 in MP(MD)
No.1/2015 in CRP(MD)SR.50547/15)

5. The President,
Uppukottai Panchayat Union,
Bodinayakanur Taluk, Theni District.

...7th Respondent/7th Respondent/
5th Defendant

PRAYER: Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition by setting aside the order and decree, dated 19.12.2014 passed in I.A. No.105 of 2011 in O.S. No. 335 of 2004 on the file of the District Munsif Cum Judicial Magistrate, Bodinayakanur, Theni District.

For Petitioners	: No Appearance
For Respondents	: Mr.K. Vijay Anand



O R D E R

The Civil Revision Petition has been filed to set aside the order and decree, dated 19.12.2014 passed in I.A. No.105 of 2011 in O.S. No. 335 of 2004 passed by the learned District Munsif Cum Judicial Magistrate, Bodinayakanur, Theni District.

2. This petition filed by the revision petitioners herein on the ground that the Court below has failed to call for the above interlocutory application for hearing on 06.01.2015 so as to enable the petitioners to deposit the cost to the tune of Rs.2,000/- (Rupees Two Thousand Only) as per the conditional Order, dated 19.12.2014 and thereby the order passed by the Court below is against the settled principles of law. Hence, the Civil Revision Petition is filed to set aside the order and decree, dated 19.12.2014 in I.A. No.105 of 2011 in O.S. No. 335 of 2004 passed by the learned District Munsif Cum Judicial Magistrate, Bodinayakanur, Theni District.

3. Heard the learned counsel for the respondents.

4. The learned counsel for the respondents herein/plaintiffs contended that the suit in O.S. No.335 of 2004 has been filed for declaration and recovery of possession and due to non-appearance of defendants, an ex parte order was passed in the suit on 14.09.2010. Against the order, dated 14.09.2010, the defendants have filed a petition in I.A. No.105/2011 to set aside ex-parte order and the same was allowed and a conditional order was passed. The learned Counsel further contended that the defendants have failed to comply with the aforesaid order, dated 19.12.2004 and hence, the petition was automatically dismissed.

5. Considering the facts, that the suit in O.S. No.335 of 2004 was filed for declaration and for recovery of possession. When the case was posted for cross examination of P.W.1, the revision petitioners/defendants were called absent and an ex-parte order was passed on 14.09.2010. Without any further delay, under Order 9, Rule 13 of C.P.C. petition was filed by the defendants and the same was allowed and conditional order was passed with costs. Since the conditional order was not complied by the revision petitioners, the petition stands automatically dismissed. The Court below has given sufficient opportunities to pay the costs, but, they have failed to do so. Eventhough, no proper reason was stated for non payment of costs, the suit was filed for declaration and recovery of possession and the I.A. No.105 of 2011 was also filed within time period. Eventhough, delivery was effected, one more chance may be given to the parties to contest the case in the interest of justice.



6. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

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// True Copy //

Sd/-

Assistant Registrar (CS-III)

/ /2020

Sub Assistant Registrar (CS)

ksa

To

The District Munsif Cum Judicial Magistrate,
Bodinayakanur, Theni District.

Copy to

The Section Officer-2 copies
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.R.P. (MD) No.2633 of 2015 (NPD)
10.12.2020

PM(CO)

KM (22.12.2020) 3P 4C