

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.210 of 2020

and

C.M.P.No.1158 of 2020

Meganathan

..Petitioner/1st Defendant

Vs

1.Krishna Veni
2.Revathi
3.Ranjith Kumar
4.Kayalvizhi

....respondents

Civil Revision Petition filed under Article 227 of Code of Civil Procedure to set aside the fair and decreetal order dated 22.03.2019 passed in I.A.No.265 of 2018 in O.S.No.18 of 2017 on the file of the III Additional District Court, Vellore at Tirupattur.

For Petitioner

..

Mr.M.Sivavarthan

For Respondents

..

M/s.A.R.M.Arunachalam, for
RR1&2

ORDER

This Revision Petition has been filed by the defendant

questioning the fair and decreetal order dated 22.03.2019 passed in I.A.No.265 of 2018 in O.S.No.18 of 2017 which was pending on the file of the III Additional District Court, Vellore at Tirupattur.

2.The said interlocutory application had been filed under Order IX Rule 13 and Section 151 of the Civil Procedure Code seeking to set aside the preliminary decree passed, so far as the present petitioner/second respondent is concerned, since it is claimed, it was passed ex-parte against him. The contention of the present petitioner/second respondent was that he has not received notice and therefore, he was not aware of the proceedings before the trial Court. My predecessor after considering the submission made by the petitioner, vide order dated 26.02.2021, had directed the Registry to put up the entire records. Pursuant to the same, the records were called for and are placed before this Court.

3. A perusal of the records would show that in I.A.No.265 of 2018 in O.S.No.18 of 2017, notice had been ordered and the same was received by the present petitioner having signed the acknowledgment on 11.12.2017 in the presence of the witnesses. The said acknowledgment had also been recorded by the Central Nazir

of the District Court at Vellore. From perusal of the endorsement made by the Central Nazir dated 14.12.2017, a reasonable presumption could be drawn that the official duty entrusted to the Central Nazir has been carried out correctly and therefore, the contention of the petitioner that he had not received notice and that the respondents had obtained an ex parte decree behind his back by playing fraud and collusion, cannot be sustained. This Court also made a cursory comparison of the signature of the petitioner as found in the affidavit filed in support of CMP No.1158 of 2020 before this Court, in which the petitioner is seeking stay of all further proceedings in O.S.No.18 of 2017 with the signature found in the trial court records. The material portion of the signature of the petitioner is in English and both signatures are identical. Therefore, on perusing the same, the learned District Judge who had heard the matter held that notice had been received by the petitioner.

4. The learned counsel for the respondents 1 & 2/plaintiffs has stated that the suit has been filed by the mother of the respondents 2 to 4 who are two sons and daughter, seeking partition and separate possession. It is stated that one of the sons had participated in the suit proceedings and all of them are also residing in the same place.

The respondents 1 and 2/plaintiffs are entitled to their respective shares. However, the petitioner and the respondents 3 & 4 who are in possession of their shares, are not ready and willing to effect the partition and since share has also been allotted to the brothers of the petitioner, the petitioner herein claiming prejudice had filed the present revision petition in order to frustrate the suit proceedings.

5. In view of the reasons mentioned above, since the notice has been served on the petitioner, it has been rightly held by the Court below that the petitioner is not entitled to seek the ex-parte decree to be set aside. This Court does not find any irregularity in the order of the Court below in order to interfere with the same. Accordingly, the Civil Revision Petition is dismissed. Let the trial Court proceed further with the final decree proceedings in manner known to law. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

सत्यमेव जयते

26.04.2021

Internet:Yes/No
Index:Yes/No

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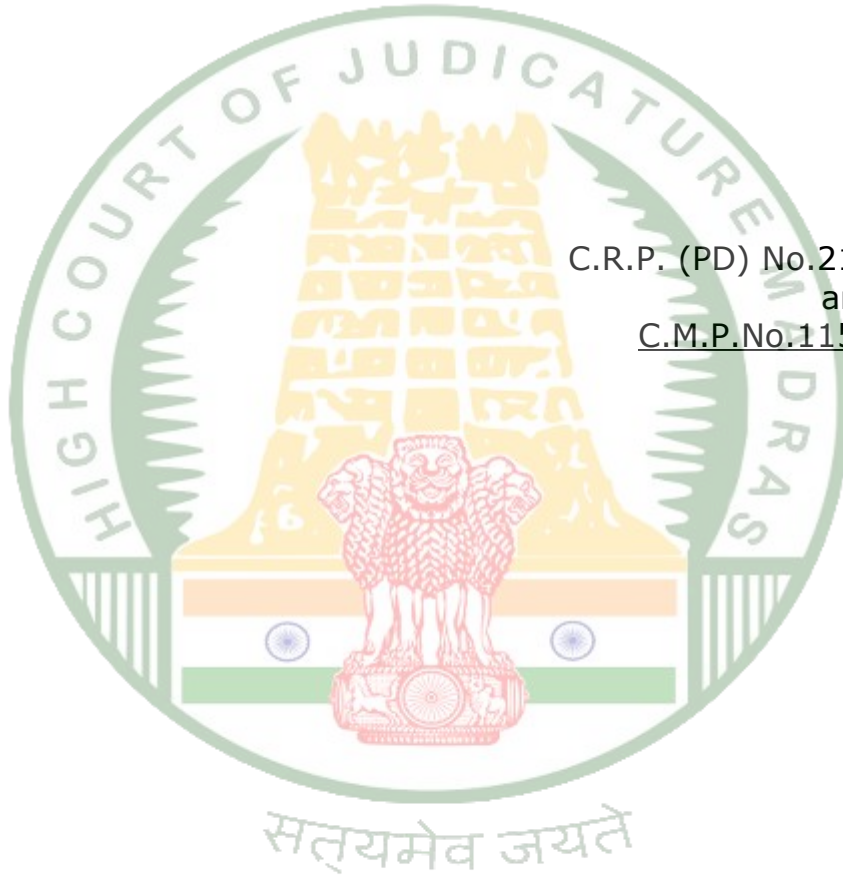
To

III Additional District Court, Vellore at Tirupattur



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C.V.KARTHIKEYAN,J.



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