

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.2096 of 2015

and

M.P.No.1 of 2015

K.R.Ayyavoo

...

Petitioner/Respondent/Plaintiff

Vs.

Renukadevi

...

Respondent/ Petitioner/Defendant

PRAYER : This Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order dated 04.02.2015 passed in I.A.No.896 of 2014 in O.S.No.214 of 2009 on the file of District Munsif, Gobichettipalayam.

For Petitioner : M/S.K.Sasindran for
M/S.A.Gokulakrishnan

For Respondent : M/S.Sudhakar for
M/S.V.P.K.Gowtham

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed against the order dated 04.02.2015 passed in I.A.No.896 of 2014 in O.S.No.214 of 2009 on the file of District Munsif, Gobichettipalayam.

2. The petitioner of this Civil Revision Petition is the plaintiff. The plaintiff has filed a suit in O.S.No.214/2009 for the relief of Permanent Injunction by alleging that he was inducted as a tenant in the suit property belonging to the petitioner/defendant in the year 1990. He has paid Rs.80,000/- to the defendant and it was agreed between the defendant that the plaintiff that in lieu of interest for the said amount the plaintiff would be in possession of the suit property for 10 years and hence the defendant should be restrained from evicting him from the suit property forcibly. Since the defendant remained ex-parte, an *ex parte* decree was passed. Thereafter, the defendant had filed a petition in I.A.No.896 of 2014 to condone the delay of 1356 days in filing the petition to set aside the ex-parte decree.

3. In the affidavit filed along with the said petition she has alleged that she was bedridden due to jaundice at the relevant point of time and hence she could not appear before the Court and contest the suit. She has further submitted that she is a widow and hence she was helpless. She had further stated that she not negligent in contesting the suit and because of her poor socio-economic situation, she couldn't make her appearance in court and contest the suit. The learned District Munsif has considered the submissions made by the defendant and allowed the petition and thereby condoned the delay. Aggrieved over that the plaintiff has filed this Civil Revision Petition.

4. Learned counsel for the petitioner submitted that the learned trial judge had gone into the merits of the case itself in the order passed in the petition to condone the delay and that the delay of 1356 days is something inordinate and hence it ought to have been dismissed.

5. Since the defendant has filed the petition to condone the inordinate delay of 1356 days, it is incumbent on the Trial Judge to evaluate the genuine intention for filing the petition. So the learned trial Judge had to incidentally go into the contentions made in the plaint and recorded a finding that if the defendant is given with an opportunity to contest the case on merits, that would serve the interest of justice. Certain facts stated in the plaint cannot be omitted to be noticed even by this court. According to the submissions the revision petitioner, he was inducted as a tenant in the suit property for 10 years on payment of Rs. 80,000/- to the defendant. It is further alleged that the rent for the property is in lieu of the interest for the said amount. Despite there is no written agreement and there is no registered deed of mortgage or lease in tune with the terms as alleged by the plaintiff in the plaint, the trial Court has taken the suit on file.

6. The respondent/defendant being a widow was not able to defend the suit by making her due appearance. It is submitted by the learned counsel for the petitioner, that the petitioner is still holding the possession of the property. The

plaintiff is able to enjoy the possession of the property for nearly 31 years. Even without any document of proof for the alleged payment his possession over the suit property is continuing. In such context of the matter, it is right for the trial Judge to consider the petition filed by the respondent/defendant to condone the delay in setting aside the ex-parte decree. Under such circumstances, I find no reason for interfere with the order of the learned trial judge.

In the result, this Civil Revision Petition is **dismissed** with a direction to the trial judge that the petition to set aside the *exparte* decree should be disposed of within a period of 2 weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2021

Speaking/Non-speaking
Index : Yes/No
Internet : Yes/No
jrs

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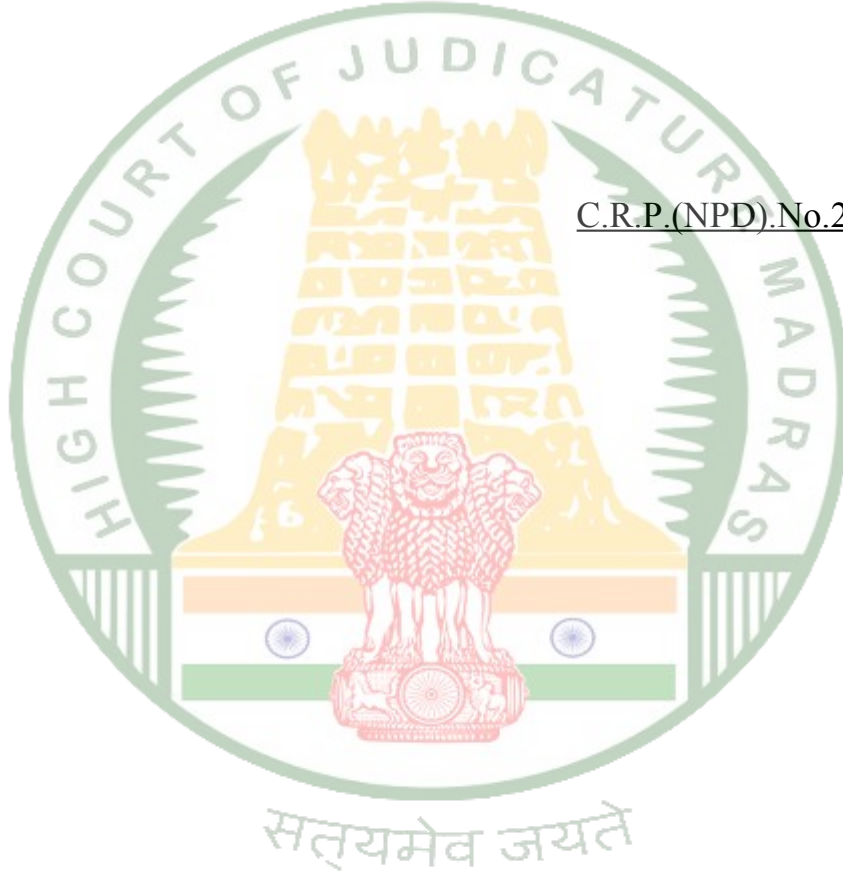
1.The District Munsif,
Gobichettipalayam.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA, J
jrs



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