

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.237 of 2015
and MP.No.1 of 2015

- 1.Arumugam(died)
- 2.Samiyathal
- 3.A.Sakthivel
- 4.Kannammal

..Petitioners

(petitioners 2 to 4 brought on record as LR's
of the deceased sole petitioner viz,
Arumugam vide court order dated 03.03.2021
made in CMP.No.434, 438, 440 of 2021 in
CRP.No.237 of 2015)

Vs.

Thulasimani

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC
against the fair and final order dated 04.12.2013 in EA.No.13 of 2013
in EA.No.94 of 2011 in OS.No.186 of 2000 on the file of the Sub Court,
Bhavani, Erode District. सत्यमेव जयते

For Petitioners : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.D.Senthilkumar

ORDER

This civil revision petition is arising out of fair and final order
dated 04.12.2013 passed in EA.No.13 of 2013 in EA.No.94 of 2011 in

OS.No.186 of 2000 on the file of the Sub Court, Bhavani, Erode District thereby allowing the petition to set aside the exparte order passed in EA.No.94 of 2011 in EP.No.19 of 2013.

2. The first petitioner is the plaintiff and the respondent is the defendant in the suit filed for specific performance. The suit was decreed by the judgment and decree dated 09.04.2003 and the trial court directed the petitioner to pay the balance sale consideration within a period of two months. Even then, the petitioner did not pay balance sale consideration as directed by the trial court. After period of eight years, the petitioner filed petition seeking permission to deposit balance sale consideration in EA.No.94 of 2011. In the said petition, execution court ordered notice and on receipt of notice, the respondent took several time on several occasions to file her counter. When the matter was finally posted on 11.02.2013, the respondent failed to file counter and as such she was set exparte and the petition was ordered. Thereafter EP was also numbered and it is pending.

3. The learned counsel for the petitioners would submit that IA.No.94 of 2011 was posted on several occasions i.e. 28.09.2012, 03.11.2012, 12.12.2012, 08.01.2013, 11.02.2013 for filing counter and

thereby she was given enough opportunity to file her counter in the said petition. Even then, she failed to file counter and wantonly allow her to set exparte and thereafter filed petition to set aside the exparte order. There is no bonafide reasons stated in the affidavit filed in support of the petition to set aside the exparte order.

4. On perusal of the records, revealed that the petitioner filed suit for specific performance and the same was decreed in his favour. The trial court subsequently directed the petitioner to pay balance sale consideration within a period of two months from the date of decree. The petitioner did not come forward to deposit or pay the balance sale consideration. After period of eight years, the petitioner filed petition to seeking permission to receive the balance sale consideration. Therefore it has to be ordered on merits and in accordance with law. The respondent failed to file counter and as such she was set exparte. Immediately, she filed petition to set aside the exparte order passed against her and the same was allowed by imposing cost of Rs.500/-. Therefore, this Court finds no irregularity or infirmity in the order passed by the court.

5. Accordingly, this civil revision petition is dismissed. However, the respondent is directed to pay another sum of Rs.2,000/- (Rupees Two

Thousand only) as cost to the petitioners within a period of two weeks from the date of receipt of copy of this order. Thereafter, the execution court is directed to pass orders on merits and in accordance with law in EA.No.94 of 2011 within a period of four weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

05.03.2021

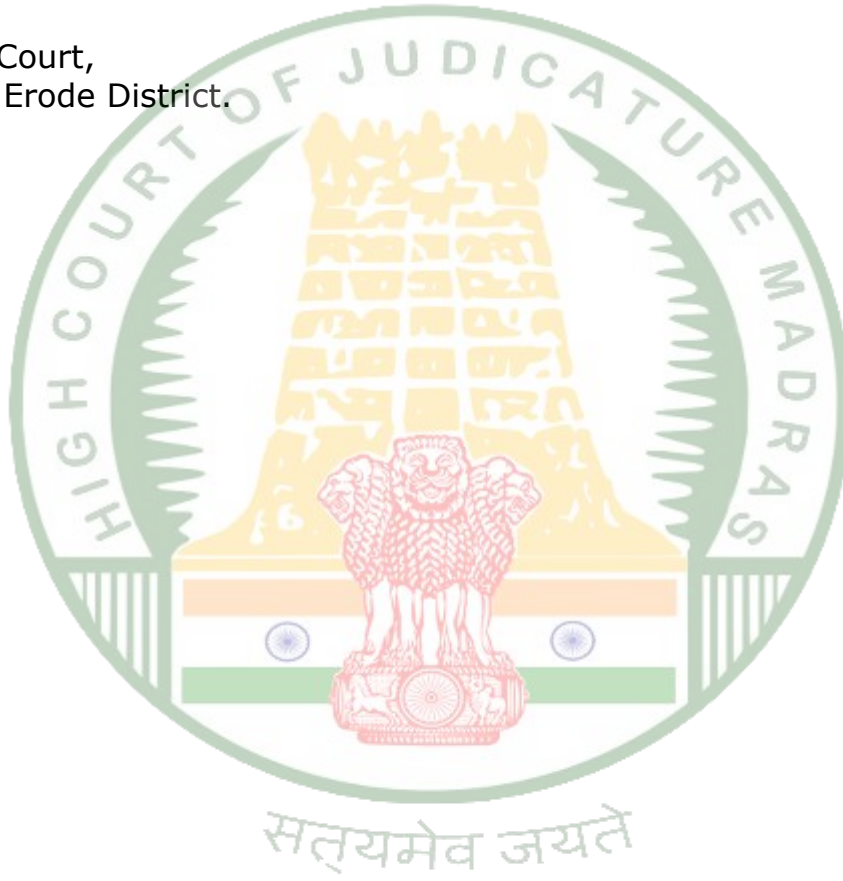
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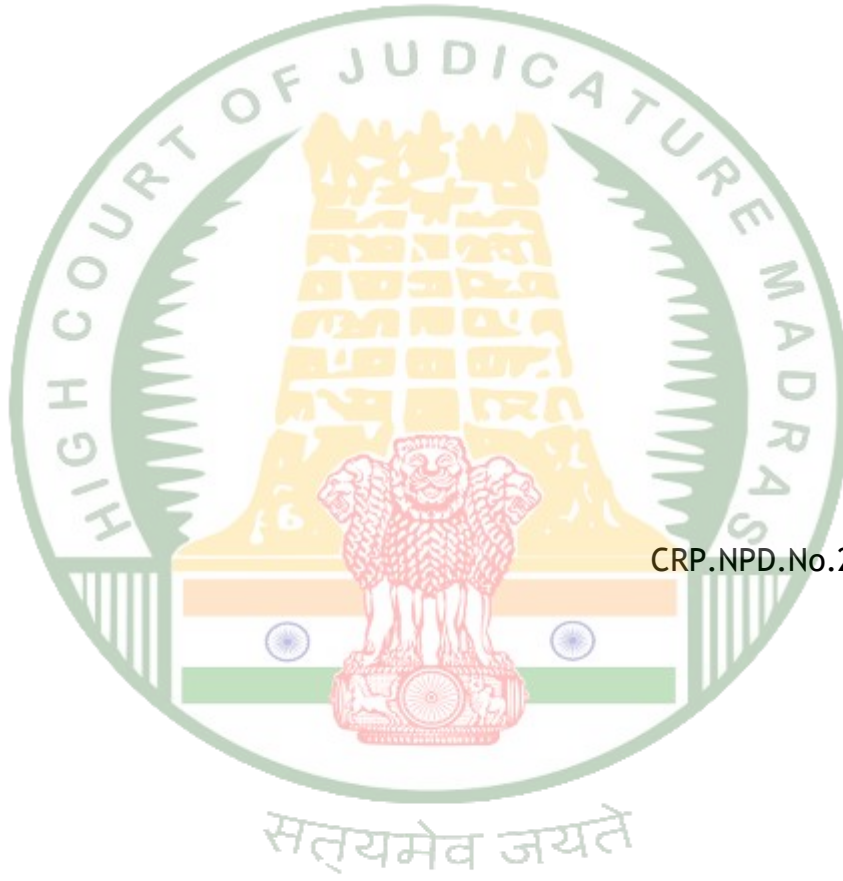
The Sub Court,
Bhavani, Erode District.



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G.K.ILANTHIRAIYAN,J.

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