

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM

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

CRP.NPD.No.4770 of 2012 and
MP.No.1 of 2012

- 1.G.Sekaran
- 2.V.Lakshmi
- 3.L.Kantha(died)
- 4.G.Vittobai(died)

..Petitioners

Vs.

- 1.Sri Paravalavannar Swamy Devasthanam,
Kanchipuram represented by its
Executive Trustee,
C.Adhilakshmi,
No.52, 20/7, 3rd Street,
Veerapandi Nagar,
Choolaimedu,
Chennai-600 094

- 2.The Executive Officer,
Sri Paravalavannal Swamy
Devasthanam, Kalandal Street,
Big Kancheepuram 631 502
(R2 impleaded vide
court order dated 14.10.2020 made in
CMP.No.9379 & 9381 of 2020 in CRP.
No.4770 of 2012

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure praying to set aside the fair order and decretal

order dated 18.06.2012 passed in CMP.No.107/10 in Un.AS.No. on the file of the Subordinate Judge, Kancheepuram.

For Petitioners : Mr.P.Mohanraj

For Respondents

For R1 : Mr.J.Ram

R2 : Notice served

ORDER

The civil revision petition is filed as against the fair and decreetal order dated 18.06.2012 passed in CMP.No.107/10 in Un.AS.No. on the file of the Subordinate Judge, Kancheepuram thereby dismissing the petition to condone the delay in filing the appeal suit.

2. The petitioners' father is the defendant in the suit filed by the first respondent herein for ejectment and also recovery of rental arrears. The suit was argued on 19.09.2006 and it was decreed. Unfortunately, while passing judgment in the suit, the petitioners' father died on 21.09.2006. Thereafter, the first respondent filed execution petition in EP.No.47 of 2007. They filed petition to implead the petitioners herein as legal heirs of the original defendant and on receipt of he notice in the said

application, they were not appeared before the execution court and as such they were set exparte and delivery ordered by an order dated 18.12.2009. In fact, on 19.08.2009, the petitioners were impleaded as party in the execution proceedings. Immediately on 11.03.2010, the petitioners after having knowledge about the order of delivery, they filed petition in EA.No.83 of 2010 to set aside the exparte order passed in execution petition and also filed EA.No.84 of 2010 to recall the order of delivery. Both the petitions were dismissed by the execution court and aggrieved by the same, the petitioners preferred CMA.No.7 of 2010 as against the fair and decreetal order in EA.No.83 of 2010. They also filed CRP.No.1939 of 2010 as against the fair and decreetal order in EA.No.84 of 2010. Thereafter, CMA.No.7/2010 transferred to this Court in Tr.CMA.No.3790 of 2010 and this Court dismissed both the CMA as well as CRP.No.1939 of 2010 by an order dated 09.06.2011. The petitioners also filed review petition in Rev.A.No.193 of 2011 as against the order passed in Tr.CMA and CRP before this Court and it is pending. Simultaneously, the petitioners also filed appeal suit as against the judgment and decree dated 09.10.2006 passed in OS.No.339 of 1973 before the first appellate court with the delay of 1220 days in filing the appeal suit. The said application was dismissed and aggrieved by the same, the present civil revision

petition is filed.

3. The learned counsel for the petitioners would submit that the petitioners had absolutely no knowledge about the suit proceedings, since their father only looking after the case died on 21.09.2006 after reserving the matter for judgment in OS.No.339 of 1973. After his demise, the judgment was passed and in pursuant to the said decree, the first respondent filed execution petition in EP.No.47 of 2007. Immediately came to knowledge about the order of delivery, the petitioners approached execution court as well as appellate court by way of filing appeal suit as well as to set aside the exparte order passed in execution proceedings. Therefore, they may be given one more opportunity to put forth their case in the appeal suit.

4. Per contra, the learned counsel for the first respondent would contend that in the execution proceedings in EP.No.47 of 2007, the petitioners were duly served even in the year 2008 itself in the implead petition. Even then, they failed to appear before the execution court and as such the implead petition was allowed on 19.08.2009 and exparte order was passed on 18.12.2009. In fact, in the first instance, petitioners' mother appeared before the execution court and thereafter did not

proceed the execution proceedings. Therefore, they had full knowledge about the entire proceedings since all the family members are residing in the suit property. Dispute between petitioners' father and the first respondent is pending from the year 1965 onwards. Therefore, all the family members of the deceased Govindasamy, i.e. the petitioners herein had full knowledge about the execution proceedings as well as the suit proceedings. Therefore, the petitioners wantonly failed to appear before the execution court and now come forward with the petition to condone the delay of 1220 days in filing the appeal suit, that too without stating sufficient reasons for the delay. Therefore, the court below rightly dismissed the petition and further submitted that in fact this Court also dismissed the civil revision petition and Tr.CMA challenging the order of delivery in the execution proceedings. Though the petitioners filed review petition and it is nothing to do with the delivery since this Court passed detailed order in the civil revision petition.

5. Heard Mr.P.Mohanraj, the learned counsel for the petitioners and Mr.J.Ram, the learned counsel for the first respondent.

6. The petitioners were set exparte in the execution proceedings

in EP.No.47 of 2007. The execution proceedings had arisen out of judgment and decree passed in OS.No.339 of 1973 for ejectment as well as claiming rental arrears. The said suit was argued before the trial court on 19.09.2006 and reserved for orders. While in the interregnum period, original defendant, i.e. petitioners' father died on 21.09.2006 and the suit was decreed on 09.10.2006. Though the suit was decreed after the death of the petitioners' father, as per the order Order 22 Rule 6 of CPC, the suit is not abated. Though the learned counsel for the first respondent submitted that the mother of the petitioners appeared before the execution court, there is no proof to show that she appeared before the execution court.

7. Now the point for consideration is that after order of delivery, the petitioners came to knowledge about the exparte decree as well as exparte order of the delivery passed in execution proceedings in EP.No.47 of 2007, they filed petition to set aside the exparte order passed in execution proceedings as well as filed petition to recall order of delivery in respect of the suit property. However, both the petitions were dismissed and also confirmed by by this Court in CRP.No.1939 of 2010 and Tr.CMA.No.3790 of 2010. On the same day, i.e. 11.03.2010, the

petitioners also filed appeal suit as against the judgment and decree dated passed in OS.No.339 of 1973 dated 09.10.2006 before the first appellate court with the delay of 1220 days in filing the appeal suit.

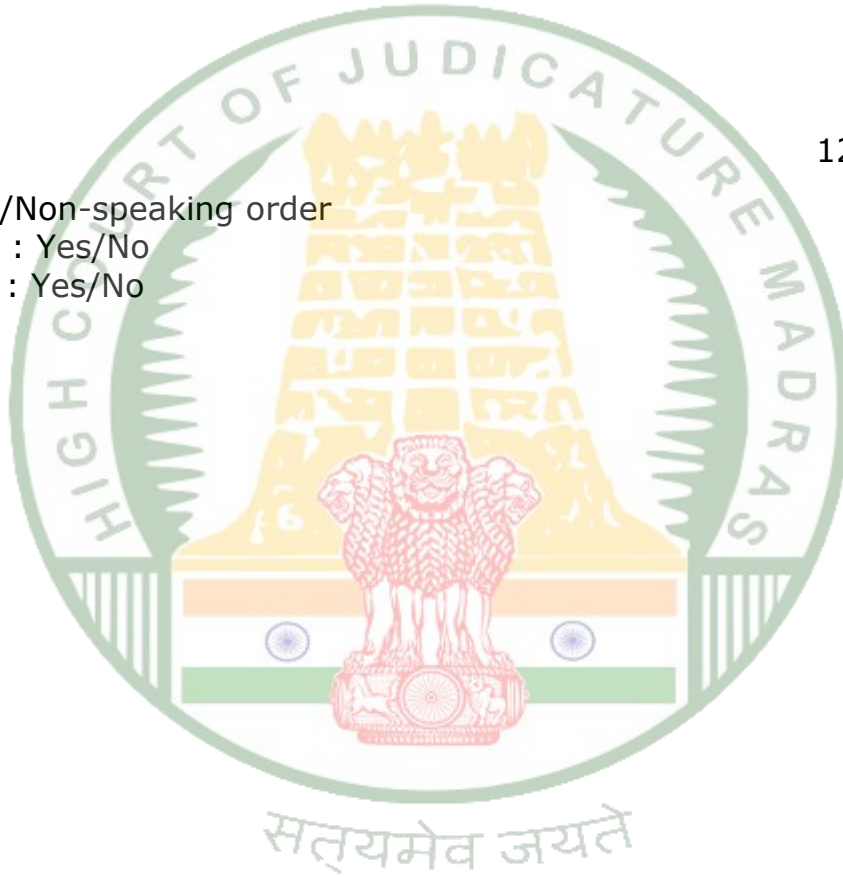
8. The court below dismissed the petition for the reason that the reasons stated by the petitioners are not acceptable and reasonable one. Already the suit is of the year 1973 and the petitioner dragged the matter for more than 37 years. But the court below failed to see when the suit was reserved for orders after hearing arguments on 19.09.2006, the petitioner's father died on 21.09.2006. Thereafter the suit was decreed by the judgment and decree dated 09.10.2006. In pursuant to the said decree, the first respondent filed execution petition and though the petitioners were served notice, they did not appear before the execution court and exparte order passed in the execution proceedings. After order of delivery, the petitioners came to understand about the exparte order as well as the judgment and decree passed in the suit. Therefore, the petitioners cannot be suffered without opportunity of appeal suit.

9. Therefore, this civil revision petition is allowed and the order dated 18.06.2012 passed in CMP.No.107/10 in Un.AS.No. on the file of

the Subordinate Judge, Kancheepuram is set aside. The first appellate court is directed to number the appeal suit and dispose of the same within a period of three months from the date of receipt of copy of this Order. Consequently, connected miscellaneous petition is closed. No order as to costs.

12.02.2021

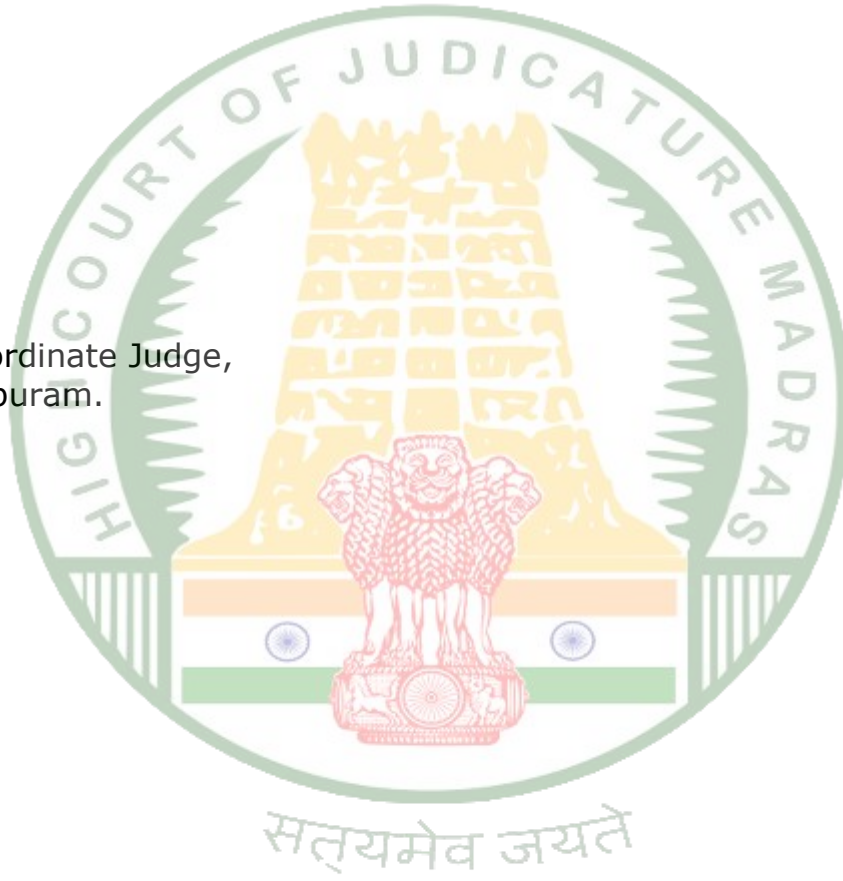
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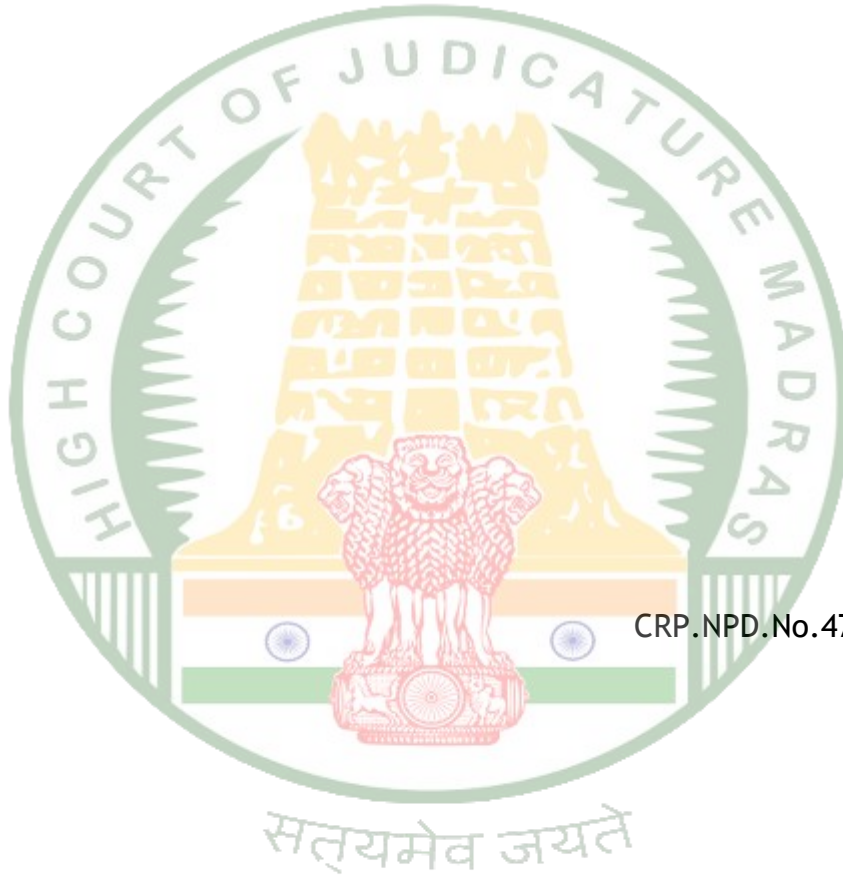
The Subordinate Judge,
Kancheepuram.



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G.K.ILANTHIRAIYAN,J.

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