

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2021

CORAM

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

C.R.P.(NPD) No.2641 of 2015
and M.P.No.1 of 2015

Shanmuga Mudaliar Petitioner

Vs.

1. Janakiraman
2. Deivanai
3. Parvathiammal
4. Sitha ... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 11.03.2015 passed in I.A.No.49 of 2013 in A.S.No.29 of 2011 on the file of the Sub Court at Cheyyar, Thiruvannamalai District.

For Petitioner : Mr.G.Senthilkumar

For Respondents

For R1 : Mr.P.Mani

R2 & R4 : Dismissed vide Court

Order dated 29.08.2019

For R3 : Notice served

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 11.03.2015 passed by the learned Subordinate Judge, Cheyyar, Thiruvannamalai District, in I.A.No.49 of 2013 in A.S.No.29 of 2011, thereby allowing the petition filed by the respondents 1 & 2 to condone the delay of 431 days in filing the petition to restore the appeal suit.

2. The petitioner is the plaintiff and the respondents are the defendants in the suit filed by the petitioner for declaration and recovery of possession and injunction in respect of the suit schedule property. The suit was decreed by the judgment and decree dated 09.03.2010. Aggrieved by the same the respondents 1 & 2 herein filed appeal suit in A.S.No.29 of 2011. While pending the appeal, the respondents failed to appear before the appellate Court as such, the appeal was dismissed as default. Thereafter, they filed application to restore the appeal suit in I.A.No.16 of 2010 and the same was allowed on condition that the respondents 1&2 shall pay a cost of Rs.500/-. Since the respondents 1 & 2 did not comply the said conditional

order, the petition was dismissed. Again the respondents 1 & 2 filed petition in I.A.No.60 of 2011 and the same was allowed and the appeal was restored. But the respondents 1 & 2 were not instructed their counsel to argue the case and the appeal suit is dismissed for default on 27.03.2012. In fact, the petitioner filed execution petition and the delivery of possession of the suit property was effected. After examining P.W.1 & P.W.2 and also R.W.1, the Court below allowed petition by stating that the respondents may be given one more opportunity to avail their appeal remedy. Aggrieved by the same, the petitioner filed this present Civil Revision Petition.

3. On perusal of the evidence of P.W.1 and P.W.2, it revealed that the first respondent herein is an aged person and he fell ill and he was admitted in hospital for taking treatment. He was affected by Jaundice and bed ridden. The said fact was corroborated by P.W.2. Therefore, the appellate Court rightly allowed the petition and this Court finds no illegality or irregularity in the order passed by the Court below. However, the appellate Court while allowing the petition to restore the appeal suit on second time, did not impose any cost. Considering the same, the restoration

petition is allowed on condition that the respondents 1 & 2 are directed to pay a sum of Rs.5,000/- (Rupees Five thousand only) jointly to the petitioner within a period of two weeks from the date of receipt of copy of this Order, failing which, the restoration of appeal suit shall stand automatically dismissed.

4. With the above direction, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.02.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

सत्यमेव जयते
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To

1. The Subordinate Judge,
Cheyyar,
Thiruvannamalai District.

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

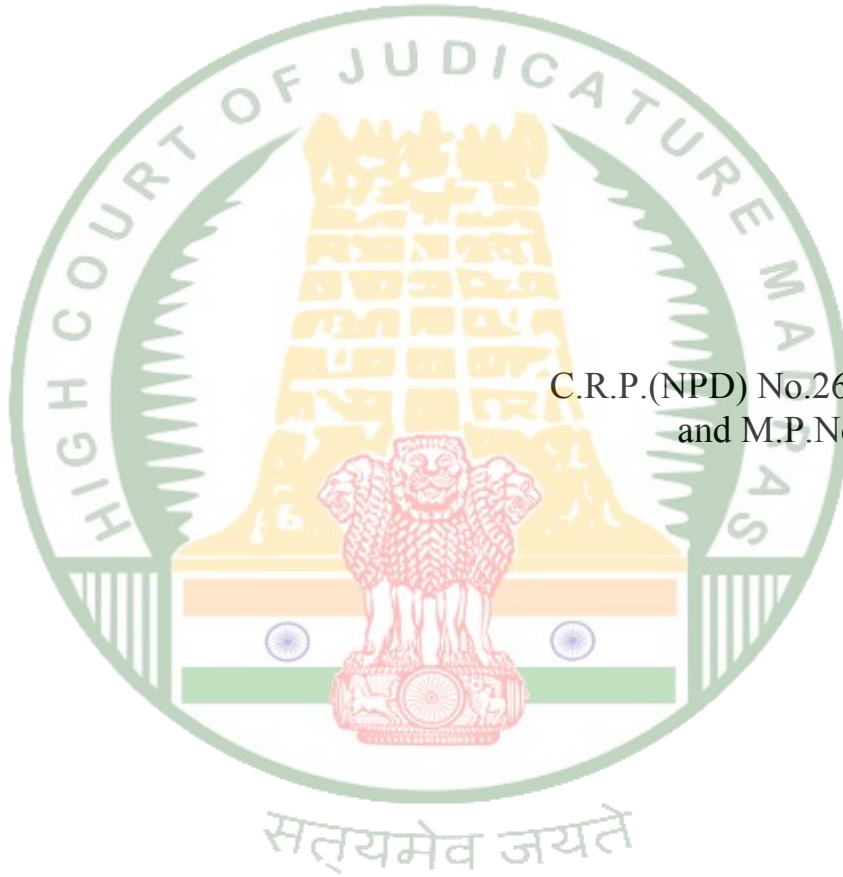


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G.K.ILANTHIRAIYAN, J.

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