

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.(NPD).No.2072 of 2018

The Tahsildar,
Tiruttani Taluk,
Tiruvallur District.

.. Petitioner

..Vs..

1. D.Devarajan
2.D.Natarajan

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the order dated 23.08.2017 made in I.A.No.444 of 2016, in O.S.No.89/1999 on the file of the learned District Munsif Court, Tirutani by allowing this Civil Revision Petition.

For Petitioner : Mr.Y.T.Aravind Gosh
Additional Government Pleader

For Respondents : Mr.M.Aloysius Raja Pragash

ORDER

This Civil Revision Petition has been filed challenging order dated 23.08.2017 made in I.A.No.444 of 2016, in O.S.No.89 of 1999 on the file of the learned District Munsif Court, Tirutani.

2. The learned Additional Government Pleader appearing for the petitioner submitted that the suit was laid by the respondent for the purpose of getting patta for the bought-in-land and though the Tahsildar is not the competent person to grant patta for the bought-in-land, the trial Court has not considered the said fact and simply decreed the suit on the ground that the Tahsildar/defendant was set ex-parte. He further submitted that though the District Collector is the competent authority to issue patta, as per BSO 45, in respect of bought-in-land, the plaintiff has purposefully omitted to implead the District Collector in the said suit. He would further submit that consequent to the decree passed by the Court below, an E.P. was filed and the order is yet to be passed.

3. He further submitted that the petitioner/Tahsildar has filed an application in I.A.No.444 of 2016 in O.S.No.89 of 1999 before the District Munsif, Tiruttani seeking condonation of delay of 5816 days in filing the petition under Order 9 Rule 13 of CPC and the same came to be dismissed without giving any reasons, as against which this Civil Revision Petition is filed. It is further contended that the decree was passed against the Tahsildar to issue the patta for the bought-in-land, however, the Tahsildar does not have any

power to issue patta as on date and the said decree is only a non-executable decree against the Tahsildar. He further submitted that though this petition has been filed with a delay of 5816 days, the reason for delay was due to the fact that the petitioner had unnoticed the Judgment and decree passed by the Court below and when the notice was served in the Execution Petition, the petitioner came to know about the fact of the Judgment and decree passed in the suit and immediately he filed an application to set aside the expart decree along with condone delay petition, however, without considering the fact that the decree is a non executable decree, the Court below dismissed the application for condonation of delay. He further submitted that in the interest of both the parties, it is just and necessary to condone the delay and thereafter decide the suit on merits and therefore the order passed by the Court below may be set aside.

4. The learned counsel for the respondent fairly submits that the delay may be condoned, because the petitioner has taken a stand that the order has been passed against him by the authority, who is not competent to issue patta.

KRISHNAN RAMASAMY, J

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5. In view of the submission made by the learned counsel for the petitioner and the respondent, this Court is of the view it would be appropriate to condone the delay of 5816 days in filing the petition under Order 9 Rule 13 of Civil Procedure Code with costs.

6. Accordingly, the order dated 23.08.2017 made in I.A.No.444 of 2016 in O.S.No.89 of 1999 is set aside and I.A.No.444 of 2016 is allowed on condition that the petitioner pays a sum of Rs.5,000/- to the respondent counsel, within a period of four weeks from the date of receipt of a copy of this order. However, it is made clear that this order will not be taken as a precedent to refer in any other matters for condonation of delay.

7. The learned counsel for the petitioner seeks a direction from this Court to implead the Collector as necessary party in the suit. It is made clear that it is not necessary for this Court to issue such a direction, if necessary the petitioner can file the appropriate application before the Court below seeking to implead the District Collector.

With the above observations, this Civil Revision Petition is allowed.

No costs.

31.03.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

To

The District Munsif Court, Tirutani

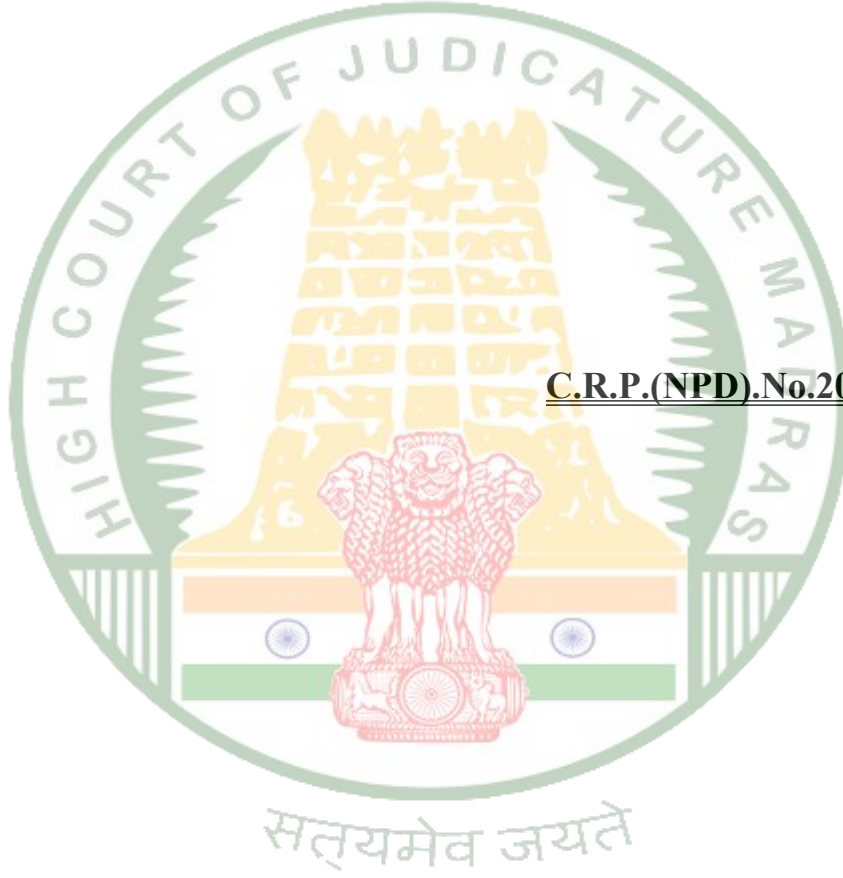


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