

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(P.D).No.2609 of 2016 and
C.M.P.No.13414 of 2016

Narayanasamy @ Narayanappa ...Petitioner

Vs.

Mahaveer Mutha ...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India as against the fair and decretal order dated 18.04.2016 passed in I.A.No.635 of 2014 in O.S.No.186 of 2007 on the file of the Sub Court, Hosur.

For Petitioner : Ms.R.Sripriya for
Mr.V.Raghavachari

For Respondent : Mr.S.Siva Shanmugam

ORDER

This Civil Revision Petition has been filed as against the fair and decretal order dated 18.04.2016 passed in I.A.No.635 of 2014 in O.S.No.186 of 2007 on the file of the Sub Court, Hosur.

2.Petitioner is the plaintiff and he filed the suit in O.S.No.186 of

2007 on the file of the Sub-Court, Hosur, with a prayer for partition and separate possession.

3.Before the trial Court defendants 1 to 4 appeared through an advocate and filed vakalat. Summons were not served to the 5th defendant (the respondent herein). Thereafter, paper publication was effected. Even though paper publication was effected, no one has entered appearance on behalf of the 5th defendant. Hence he was set as exparte on 19.08.2009.

4.Thereafter, the 5th defendant filed a petition in I.A.No.635 of 2014 to condone the delay of 1755 days in filing the application under Order 9 Rule 13 to set aside the exparte decree. Which was allowed by the trial Court with a cost of Rs.2,000/- payable by the 5th defendant to the plaintiff.

5.Aggrieved by the order dated 18.04.2016 in I.A.No.635 of 2014, the plaintiff/petitioner has preferred this present Civil Revision Petition.

6.The learned counsel for the petitioner would submit that the

contention of the 5th defendant in his affidavit is that summons were not served to him is false and the address mentioned in the plaint and the address mentioned in the affidavit are one and the same. For this address alone summons were sent. Further, after passing of preliminary decree, the 5th defendant has filed a petition to condone the delay of 1755 days and it has been allowed with cost of Rs.2,000/- is unsustainable. The 5th defendant has to explain the cause of the delay for each and every day. Even though he failed to do so, the trial Court condoned the delay, which is not acceptable and thus pleaded to allow the Civil Revision Petition.

7.The learned counsel for the respondent/5th defendant would submit that the address mentioned in the affidavit and the plaint is indisputably same. But the summons were not served to the 5th defendant. He had purchased 3.67 acre land in the same Survey Number on 02.09.1994 and he is in possession and enjoyment for the past 20 years. Defendants 1 to 4 were also filed written statement. After effecting paper publication, the 5th defendant was set as exparte. Further, the fact of the exparte preliminary decree was came to the knowledge of the 5th defendant only on 15.09.2013.

Immediately he filed an application with a petition to condone the delay of 1755 days. In order to give a fair chance to contest the suit, the delay petition has to be allowed and exparte preliminary decree has to be set aside. Hence the trial Court, to meet the ends of justice allowed the petition with cost and thus supported the order of the trial Court and pleaded to dismiss the Civil Revision Petition.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials on record.

9. The admitted fact of the case is that the petitioner filed the suit for partition and prayed for preliminary decree and also claimed 1/5th share in the suit property. On perusal of trial Court records it is found that the summons were not served to the 5th defendant through Court and through post. On 30.04.2009, ordered to issue paper publication and on 25.06.2009, 31.07.2009, the 5th defendant called absent. Hence he was set as exparte. Thereafter exparte evidence was taken on 19.08.2009 by receiving proof affidavit of P.W.1 and also marked Ex.A1 and Ex.A2 and thereby the suit

was decreed for preliminary decree.

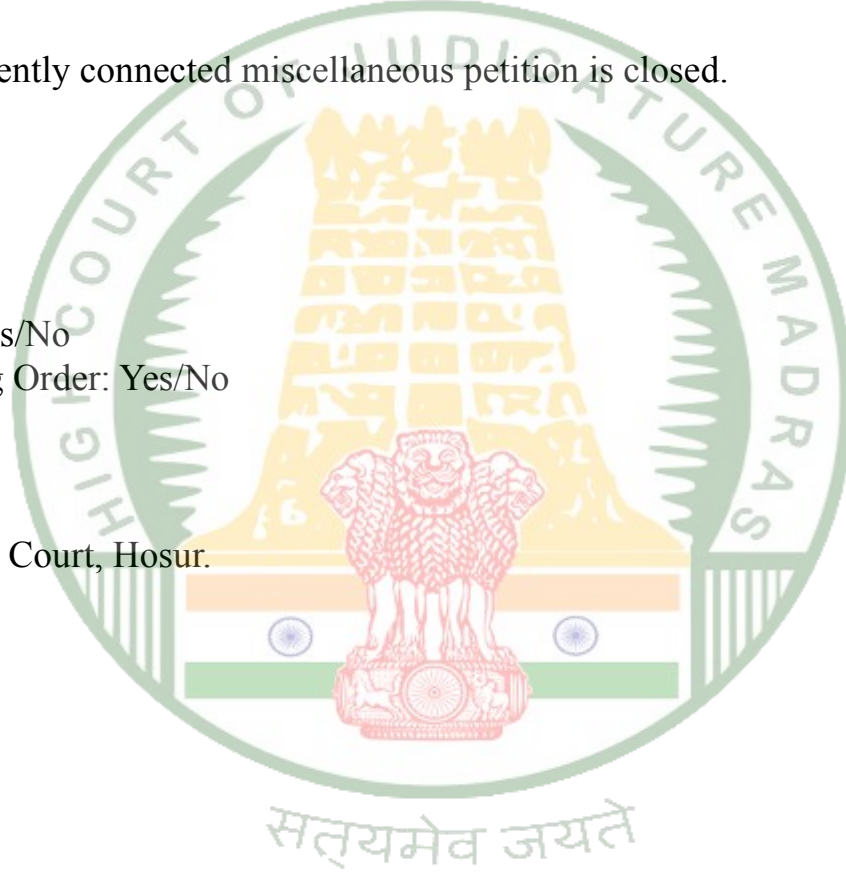
10. According to the respondent, he purchased the suit property in the year 1994 and he was in possession for the past 20 years. He came to knowledge about the passing of preliminary decree only on 15.09.2013. Further, in the delay petition, the respondent has to show sufficient cause for the delay of 1755 days. "Sufficient cause" has not been defined anywhere in the Code of CPC. It is a question to be determined in the facts and circumstances of each case. A party should not be deprived of hearing unless there has been something equivalent to misconduct or gross negligence on his part. Necessary materials filed that he was not served with summons either by Court or through post. Therefore, the ultimate purpose of doing substantial justice must be kept in mind. While considering a petition for condoning the delay, the trial Court has rightly allowed the petition on payment of cost of Rs.2,000/-. I find no error or infirmity in the order of the trial Court dated 18.04.2016 passed in I.A.No.635 of 2014 in O.S.No.186 of 2007 on the file of the Sub Court, Hosur.

11.Hence the order dated 18.04.2016 passed in I.A.No.635 of 2014 in O.S.No.186 of 2007 on the file of the Sub Court, Hosur, is confirmed and the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

01.07.2021

Index:Yes/No
Speaking Order: Yes/No
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To
The Sub Court, Hosur.

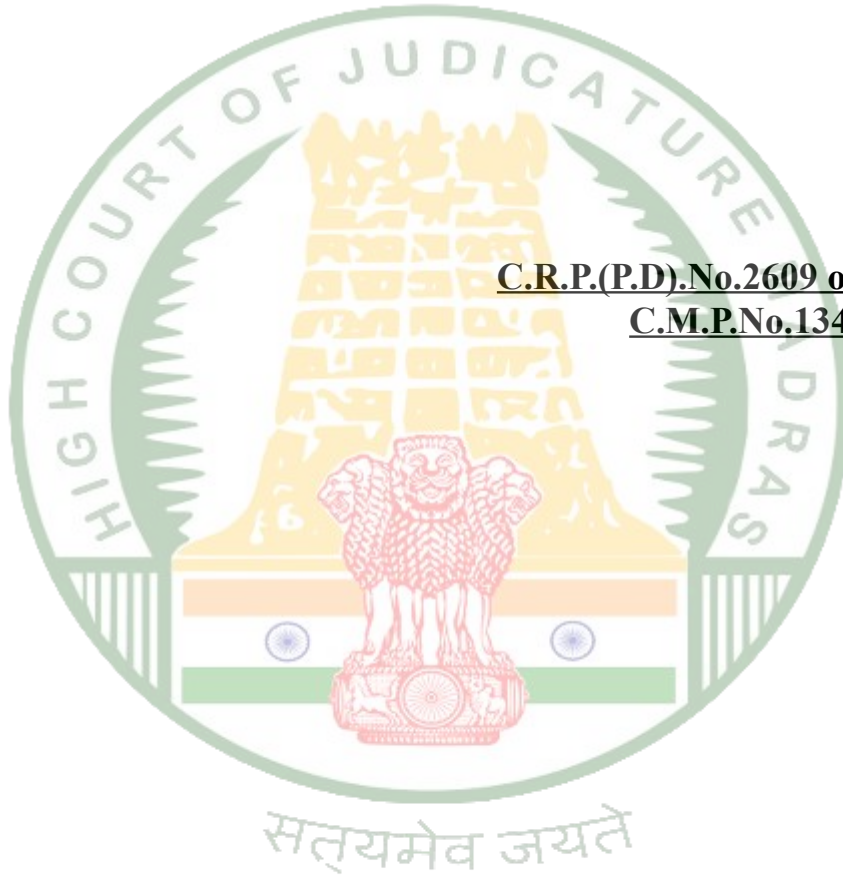


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