

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.2872 of 2016
and C.M.P.No.14574 of 2016

1.Muthusamy
2.Vasanthamani
3.Senthil
4.Thangamani
5.Ravikumar

...Petitioners

Vs

Karuppasamy

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India as against the fair and decretal order passed in I.A.No.1387 of 2015 in O.S.No.8 of 2015 dated 03.06.2016 by the learned Judge of the District Munsif Court at Sathyamangalam.

For Petitioners : Mr.A.Mohamed Ismail

For Respondent : Notice served
No appearance

ORDER

The Civil Revision Petition is arising out of the fair and decratal order passed in I.A.No.1387 of 2015 in O.S.No.8 of 2015 dated 03.06.2016 by the learned Judge of the District Munsif Court at Sathyamangalam, thereby dismissed the petition filed by the petitioner herein to condone the delay of 117 days in order to set aside the exparte decree.

2.The learned counsel for the petitioners would submit that the respondent filed a suit for declaration and injunction in respect of the suit property. The petitioners all are belongs to same family and the 1st petitioner alone looking after the suit filed by the respondent herein. Since the 1st petitioner suffered with Jaundice he could not be able to instruct the counsel, who is appearing on behalf of them, to file the written statement in the suit. Therefore, in the suit an exparte order was passed on 23.06.2015. Thereafter the respondent filed execution petition and on receipt of the notice from the Execution Court, the 1st petitioner herein came to understand that the suit was decreed as exparte. Thereafter, the 1st petitioner contacted his counsel and filed a petition to set aside the exparte decree. The said petition was filed with 117 days of delay. He further

submitted that the suit is for declaration and injunction and as such the petitioners may be given an opportunity to defend the suit on merits.

3.Though notice was served on the respondent and name also printed in the cause list, no one has appeared on behalf of the respondent either by person or through his counsel.

4.Heard Mr.A.Mohamed Ismail, learned counsel appearing for the petitioners and perused the materials.

5.The respondent filed the suit for declaration and injunction. Pending suit, the petitioners were set as an exparte for not filing written statement and also for not appearing before the trial Court. Since the 1st petitioner alone looking after the suit filed by the respondent he could not be able to contact his counsel, for the reason that he was suffered with Jaundice and he took natural treatment in his native. Therefore, there is a delay of 117 days in filing the petition to set aside the exparte decree. Thereby the trial Court dismissed the petition for the reason that no sufficient reasons have been stated by the petitioners to condone the delay of 117 days in filing the petition in I.A.No.1387 of 2015 in O.S.No.8 of 2015. It is also seen that the petitioners after engaging the counsel to appear

on behalf of them, had taken back the bundles, to appoint another counsel to represent on behalf of them before the trial Court. Thereafter the 1st petitioner suffered with Jaundice and that he is the person only person, who is looking after the suit filed by the respondent on behalf of the other petitioners and as such he could not be able to contact his counsel to defend the case.

6.Considering the above facts and circumstances of the case, admittedly the suit is filed by the respondent for declaration and injunction in respect of the suit property and the petitioners can be provided with one more opportunity to defend their case.

7.Therefore the order of the trial Court made in I.A.No.1387 of 2015 in O.S.No.8 of 2015 dated 23.06.2015 is set aside.

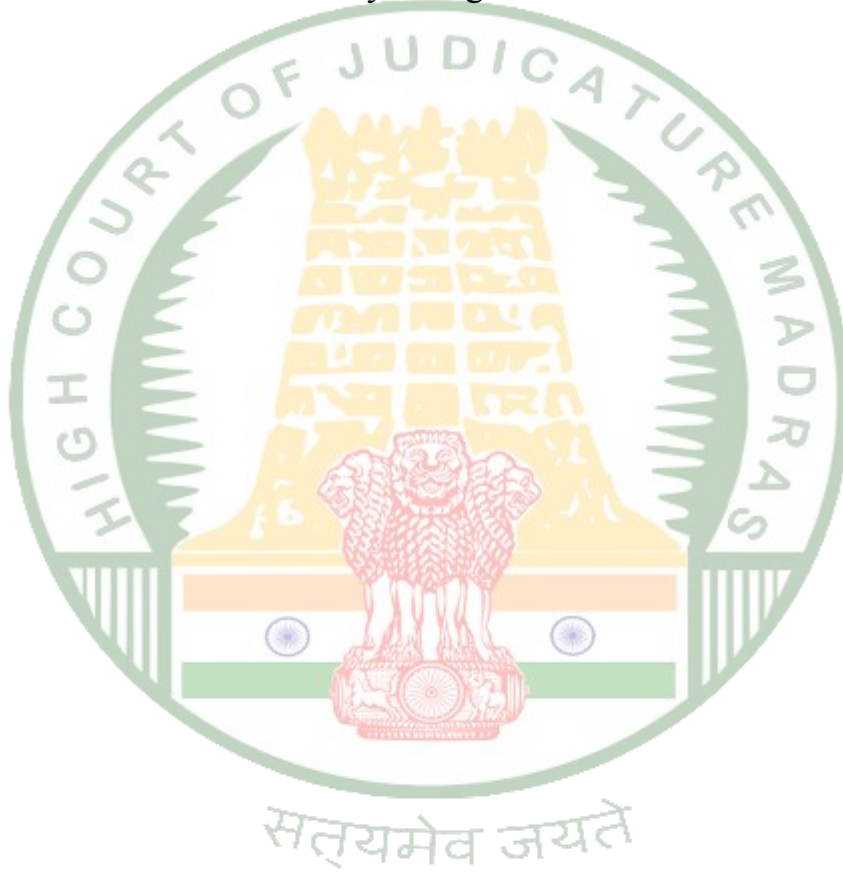
8.Accordingly the Civil Revision Petition is allowed. Further the trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

11.01.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To
The District Munsif Court at Sathyamangalam.

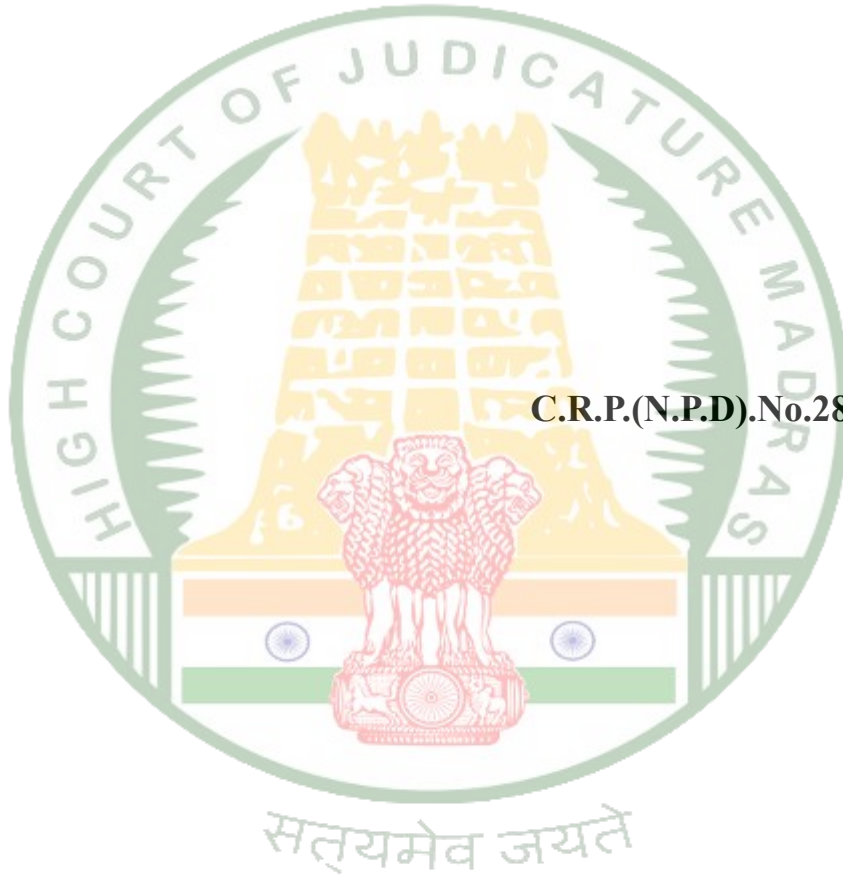


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