

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

CORAM

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

C.R.P.(NPD)No.2544 of 2018

C.M.P.No.15439 of 2018

1. P.Kumar

2. P.Manikandan

3. P.Arumugam

4. P. Alamelu

... Petitioners

Vs.

1. N.Elumalai

2. R.Kariraman

3. S.Meena

4. Minor Kousalya

Rep by her mother Meena

5. Minor Poovizhi

Rep by her mother Meena

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 23.04.2018 passed by the learned I Additional Subordinate Judge, Salem in I.A.No.14 of 2017 in O.S.No.166 of 2007 by allowing the present Civil Revision Petition.

For Petitioners : Mr.B.Kumarasamy
For Respondents
For R1 : Mr.R.Meenal

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 23.04.2018, passed by the learned I Additional Subordinate Judge, Salem in I.A.No.14 of 2017 in O.S.No.166 of 2007, thereby dismissing the petition to condone the delay in filing the set aside the exparte decree.

2. The petitioners are the defendants 1 to 4 and the first respondent is the plaintiff. The first respondent filed suit for declaration and permanent injunction in respect of the suit property. After receipt of the suit summons, the petitioners engaged counsel and failed to appear before the Court below. Therefore, they were set exparte and ex-parte judgment and decree passed on 10.09.2008. After the period of several years, the petitioners filed petition in I.A.No.14 of 2017 to condone the delay in filing the petition to set aside the exparte decree. The said petition was dismissed by the Court below, as against which the present Civil Revision Petition.

3. It is seen from the records, after the exparte decree, the first respondent filed execution petition in R.E.P.No.201 of 2014 for recovery of cost. In the said execution petition, notice was served and on receipt of the same, the petitioners came to the knowledge about the decree passed by the Court below. Immediately, the petitioners engaged counsel and appeared before the execution Court in R.E.P.No.201 of 2014 on 17.03.2014 and took time for filing counter in the execution petition. Thereafter, they failed to file any counter and again they were set exparte and attachment was ordered. In the mean time, the first respondent filed another petition in R.E.A.No.77 of 2016 seeking permission of the Court below for simultaneous execution in respect of the relief of permanent injunction, in which notice was ordered. The notice was duly received by the petitioners and they also engaged counsel and took time for filing counter.

4. Therefore, in both the proceedings, the petitioners engaged counsel and took time for filing counter. Even then, they did not take any steps to set aside the exparte decree passed in the main suit. That apart, there is no explanation for the delay in non-filing of the petition to set aside

the exparte decree. Therefore, the Court below rightly dismissed the petition filed by the petitioners and this Court finds no infirmity or illegality in the order passed by the Court below.

5. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

17.06.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

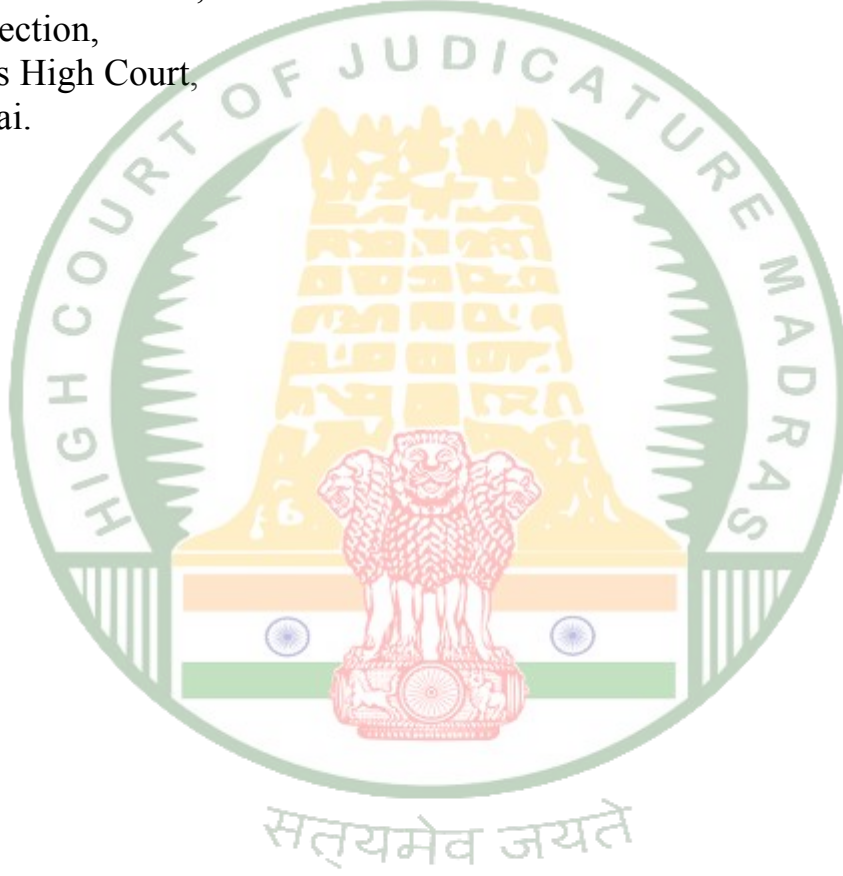
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To

1. I Additional Subordinate Judge,
Salem.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

rts



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