

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

CORAM

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

C.R.P.(NPD) No.2903 of 2018 and
CMP.No.16983 of 2018

1.Muthusamy
2.Mariammal
Gnanaprakasam
Vs
...
...
Petitioners
Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 21.09.2017 passed in IA.No.480 of 2017 in OS.No.139 of 2015 on the file of the District Munsif Court at Mettur.

For Petitioners : Mr.R.Nalliyappan

For Respondent : Mr.S.Mahesh

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 21.09.2017 passed in IA.No.480 of 2017 in OS.No.139 of 2015 on the file of the District Munsif Court at Mettur, thereby dismissing the

petition to condone the delay in filing the petition to set aside the exparte decree.

2. The respondent filed suit for declaration, delivery of possession and permanent injunction in respect of the suit property. On receipt of suit summons, the petitioners engaged advocate and thereafter failed to file written statement and as such they were set exparte on 12.01.2016 and the exparte decree was passed on 04.02.2016. On the strength of the decree, the respondent filed execution petition for taking delivery of possession in respect of the suit property. At that juncture, the petitioners came to understand about the exparte decree and immediately filed petition to set aside the exparte decree with delay of 382 days and the same was dismissed. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioners would submit that they are coolis. The first petitioner was only looking after the case and engaged counsel. The second petitioner is being wife, she is running a tea stall in the suit property. Due to avocation, the first petitioner went to Madhya Pradesh

and as such they could not able to give proper instruction for their counsel to file their written statement. In fact, they are in possession and enjoyment of the suit property from the year 1987. While being so, the respondent is being influenced person and obtained patta for the suit property in his name. Except patta, no other documents to show that he is the owner of the property. Admittedly, the suit property is 'natham' and the petitioners are in possession and enjoyment of the suit property from the year 1987. In fact, when the respondent disturbed their possession and enjoyment, the petitioners were constrained to file suit in OS.No.284 of 2011 for injunction in respect of the very same property. Unfortunately, it was dismissed for default and thereafter they did not pursue the same since the first petitioner was out of the State. Utilising the said circumstances, the respondent filed the present impugned suit with false and frivolous allegations and obtained ex parte decree.

3.1 He further submitted that the petitioners categorically stated the reasons for delay caused in filing the petition to set aside the ex parte decree. Even then, the court below without considering the same dismissed.

However, the suit is for declaration and recovery of possession and as such they may be given one more opportunity to defend the suit. He further submitted that along with the petition, they also filed their written statement.

4. Per contra, the learned counsel for the respondent submitted that the petitioners were engaged as tenant in the year 2006 and they duly paid the rent till the year 2010. Immediately, they filed suit in OS.No.284 of 2011 for injunction and the same was also dismissed for default. Therefore, the respondent filed suit for declaration and recovery of possession, in which summons were duly served to the petitioners. They also engaged counsel and he filed vakalat on 13.07.2015. Thereafter, they were given opportunities on various dates to file their written statement. Only on 12.01.2016, they were set exparte and exparte decree was passed on 04.02.2016. Whereas, even according to the petitioners, the first petitioner herein went to Madhya Pradesh only on 10.12.2015. Therefore, at that juncture, they were not set exparte and they were directed to file their written statement. Therefore, they stated false reasons in the affidavit and they have not stated any sufficient reason to condone the delay of 382 days

in filing the petition to set aside the exparte decree and prayed for dismissal of the civil revision petition.

5. Heard, Mr.R.Nalliyappan, the learned counsel for the petitioners, and Mr.S.Mahesh, the learned counsel for the respondent.

6. The petitioners are the defendants and the respondent is the plaintiff. The respondent filed suit for declaration, delivery of possession and permanent injunction in respect of the suit property. The suit property is a tea shop with residential small portion. On perusal of the written statement filed along with condone delay petition revealed that they are in possession and enjoyment of the suit property from the year 1987. However, the respondent obtained patta and filed the present suit for declaration and recovery of possession. Further revealed that the petitioners were at no point of time engaged as tenant under the respondent and they never paid any rent to the respondent. The property is classified as 'natham' and as such they have got defence to defend the suit on merits.

7. On perusal of the affidavit filed in support of the petitioners also revealed that the first petitioner is only looking after the case. Admittedly, they are coolis. The first petitioner went to Madhya Pradesh and Kerala for his avocation and as such they could not able to instruct their counsel to file vakalat in time.

8. Considering the above, this civil revision petition is allowed and the order dated 21.09.2017 passed in IA.No.480 of 2017 in OS.No.139 of 2015 on the file of the District Munsif Court at Mettur is set aside on condition that the petitioners shall jointly pay a sum of Rs.5,000/- (Rupees Five Thousand only) directly to the respondent within a period of two weeks from the date of receipt of copy of this order, failing which the order passed by this Court shall stand automatically cancelled. On such payment, the court below is directed to dispose of the suit within a period of six months thereafter. Consequently, connected miscellaneous petition is closed. No order as to costs.

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Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

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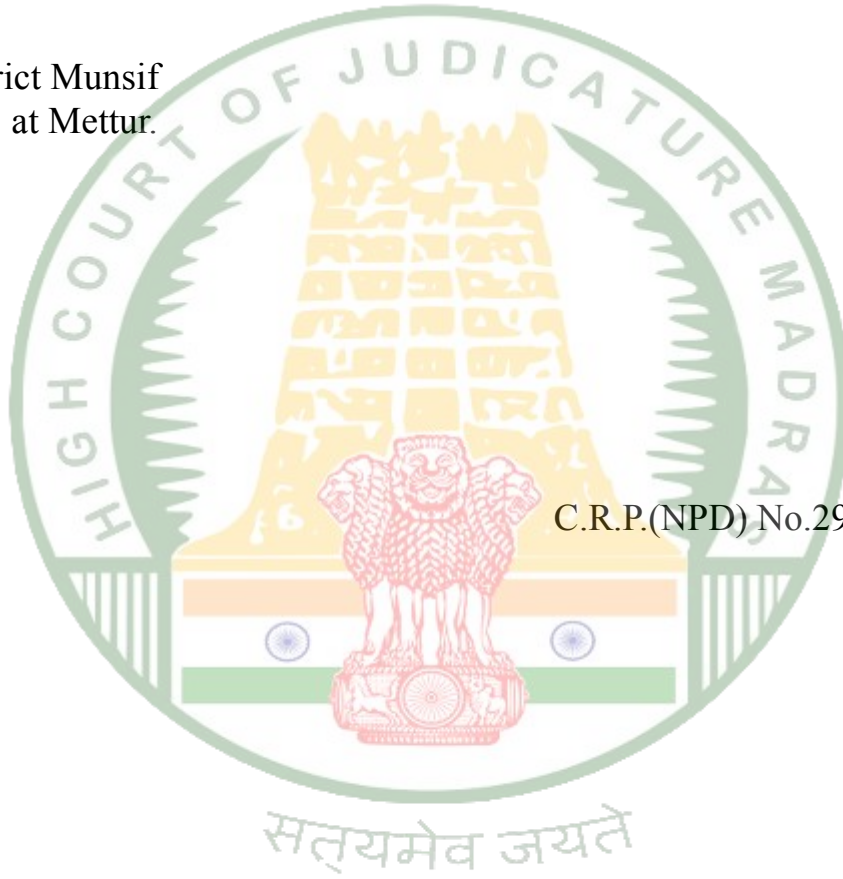
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G.K.ILANTHIRAIYAN,J.

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To

The District Munsif
at Mettur.



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