

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.146 of 2014
and M.P.No.1 of 2014

- 1.M.Santhanam (died)
- 2.Kamsala
- 3.Saraswathi
- 4.Revathi
- 5.Venda
- 6.Sampath
- 7.Gokulnathan

...Petitioners

Vs.

- 1.Gopal (died)
- 2.Munusami (died)
- 3.Ammayee Ammal
- 4.M.Suseela
- 5.Muniammal
- 6.Sreenivasan
- 7.Anniammal
- 8.M.Shanmugam
- 9.Nagammal
- 10.M.Sivalingam
- 11.M.Malar
- 12.M.Soroja
- 13.M.Manjula
- 14.Valliammal
- 15.Boopathi
- 16.Manjunathan

17.Eeswari
18.Yuvaraj

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 05.10.2013 made in I.A.No.604 of 2012 in O.S.No.235 of 2004 on the file of the District Munsif Court, Sholinghur.

For Petitioners : Mr.A.Gouthaman

For Respondents : Mr.R.Shivakumar for
M/s K.M.Vijayan Associates
for R15 to R18
R1-died
R2 to R13-given up
R14 - Notice served.

ORDER

This Civil Revision Petition is directed as against the order and decree dated 05.10.2013 made in I.A.No.604 of 2012 in O.S.No.235 of 2004 on the file of the District Munsif Court, Sholinghur, thereby allowed the petition to condone the delay of 1060 days in filing the setting aside the exparte decree.

2.The deceased 1st petitioner is the 4th plaintiff in the suit. The deceased 1st respondent is the defendant.

3.While pending the Civil Revision Petition the 1st respondent died and the respondents 14 to 18 were impleaded as his legal heirs. The 1st petitioner herein has filed the suit for permanent injunction in respect of the suit property. The said suit was decreed ex parte by Judgment and decree dated 18.12.2009. Thereafter, the deceased 1st respondent came to understand about the ex parte decree only after receipt of the notice in the execution petition, i.e., in E.P.No.5 of 2012. Thereafter, he filed a petition to set aside the ex parte decree with a delay of 1060 days. The same was allowed with cost that the 1st respondent has to pay a sum of Rs.1,000/-. Cost also paid to the petitioners.

4.Aggrieved by the same, the petitioners herein has preferred this Civil Revision Petition. In fact after the death of the 4th plaintiff the petitioners and the other respondents herein were impleaded as parties.

Now, the 4th plaintiff, the petitioner herein filed the present Civil Revision Petition and shown other plaintiffs as respondents in this Civil Revision Petition.

5.It is averred that in the affidavit, that while pending the Civil Revision Petition, the 1st respondent died and as such the respondents 14 to 18 were impleaded as his legal heirs. On perusal of the affidavit filed in support of the condone delay petition, the reasons stated for the delay in filing the setting aside the exparte decree is that he had suffered with Jaundice and as such he could not be able to instruct his counsel to appear before the trial Court for trial. It is also seen that the deceased 1st respondent already filed his written statement.

6.Considering these aspects, the trial Court allowed the petition by an order dated 05.10.2013 in I.A.No.604 of 2012 in O.S.No.235 of 2004 with cost of Rs.1,000/- (Rupees Thousand Only).

7. Therefore, this Court finds no infirmity or irregularity in the order passed by the Court below and as such this Court is of the opinion that the Civil Revision Petition may be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. Further, the cost of Rs.1,000/- is very low and therefore, the respondents 14 to 18 are directed to pay another Rs.4,000/- as cost directly to the petitioners herein within a period of two weeks from the date of receipt of a copy of this order. Consequently connected miscellaneous petition is closed.

15.02.2021

Index: Yes/No
Speaking Order: Yes/No
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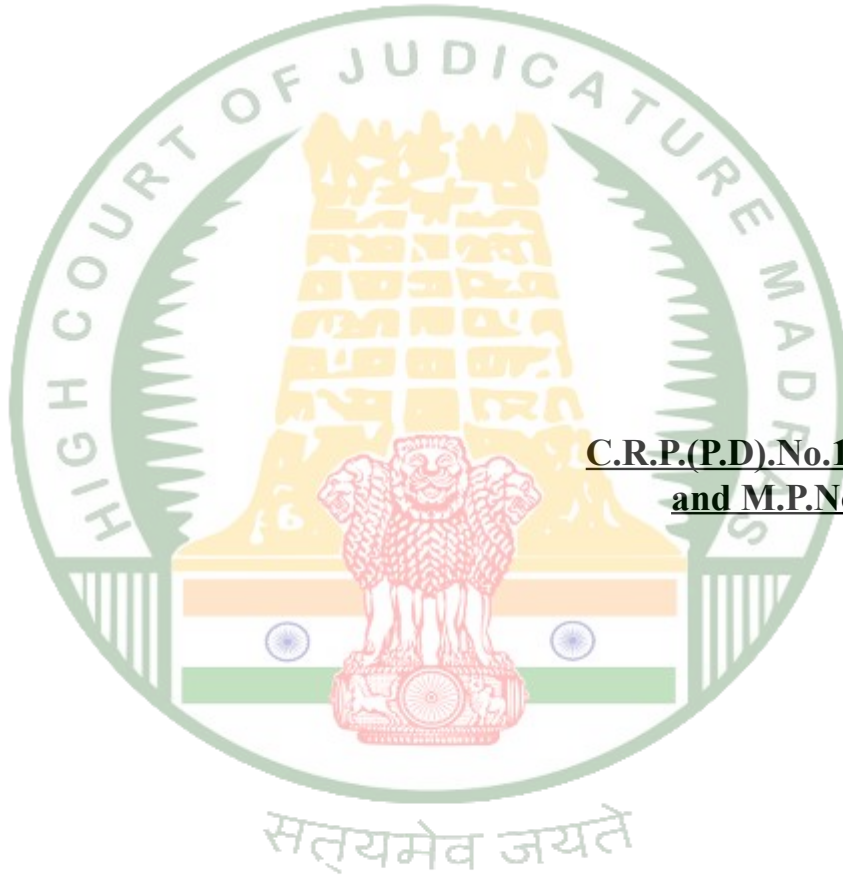
To
The District Munsif Court, Sholinghur.

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