

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.142 of 2017

P.Murugan

.. Petitioner

Vs.

Poongal (died)

1.Kalaimani

2.Selvam

3.Chitra

4.Mani

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order dated 05.10.2015 made in I.A.No.1453 of 2014 in O.S.No.236 of 2010 on the file of the District Munsif Court, Attur.

For Petitioner : Mr.A.Rajakumar

For Respondents : No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 05.10.2015 made in I.A.No.1453 of 2014 in O.S.No.236 of 2010 on the file of the District Munsif Court, Attur.

2.The petitioner is plaintiff and one Poongal and the respondents herein are the defendants in O.S.No.236 of 2010 on the file of the District Munsif Court, Attur. The said Poongal, mother of the respondents 1 to 4 died pending suit. The petitioner filed the said suit for permanent injunction against the respondents. The respondents did not file written statement and an exparte decree was passed on 22.04.2013. The respondents filed I.A.No.1453 of 2014 to condone the delay of 410 days in filing the application to set aside the exparte decree.

2(i). According to the respondents, the 3rd respondent herein is conducting the case. The 1st respondent is working as a Teacher and the respondents 2 and 4 are residing outside the village. According to the 3rd respondent, she was suffering from jaundice, she was bed ridden and was taking native treatment and was advised not to go out, especially in the sun light. When she recovered from her illness, she met her Advocate with the help of 4th respondent and came to know that exparte decree was passed on 22.04.2013. Immediately, the respondents have filed the present I.A. to condone the delay of 410 days in filing the application to set aside the exparte decree. The delay in filing the application is neither wilful nor wanton and prayed for allowing the I.A.

2(ii). The petitioner filed counter affidavit and denied all the averments made in the affidavit filed in support of the above application. According to the petitioner, all the respondents are residing in the same village. The respondents have failed to explain each and every day's delay by assigning proper reason and prayed for dismissal of the said I.A.

3.The learned Judge considering the materials placed before her and the judgments relied on by the learned counsel for the parties, allowed I.A. on condition that the respondents shall pay a sum of Rs.850/- as cost to the petitioner. The respondents have deposited the said amount and produced the challan before the Court.

4.Against the said fair and decretal order dated 05.10.2015 made in I.A.No.1453 of 2014 in O.S.No.236 of 2010, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner reiterated the averments made in the counter affidavit and submitted that the learned Judge, without properly appreciating the materials on record, erroneously allowed the I.A., which caused great prejudice to the petitioner and prayed for allowing the Civil Revision Petition.

6.Though the respondents entered appearance through counsel, there was no representation for them, when the matter was taken up for hearing on 10.08.2021. Hence, the matter was adjourned to 13.08.2021 i.e., today. Today also, there is no representation for the respondents.

7.Heard the learned counsel appearing for the petitioner and perused the entire materials on record.

8.From the materials available on records, it is seen that the petitioner has filed the suit for permanent injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property. The respondents did not file written statement and contest the suit. They were set exparte and exparte decree was passed on 22.04.2013. The respondents filed a petition to set aside the exparte decree along with the present application to condone the delay of 410 days in filing the application to set aside the exparte decree. The learned Judge considering the materials on record and the relief sought for in the

suit, in the interest of justice, to give an opportunity to the respondents, allowed the I.A. on payment of cost of Rs.850/-.

9. It is well settled that the application to condone the delay must be considered liberally and the parties should not be shut down to put forth their case at the threshold itself. The learned Judge considering the averments made in the affidavit, counter affidavit and the judgments relied on by the counsel for the parties, allowed I.A. in order to give an opportunity to the respondents to contest the suit on merits. The learned Judge has also imposed cost of Rs.850/- on the respondents, as they have approached the Court only after 410 days. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

10. In the result, the Civil Revision Petition stands dismissed. No costs.

13.08.2021

Index :Yes/No

Internet :Yes/No

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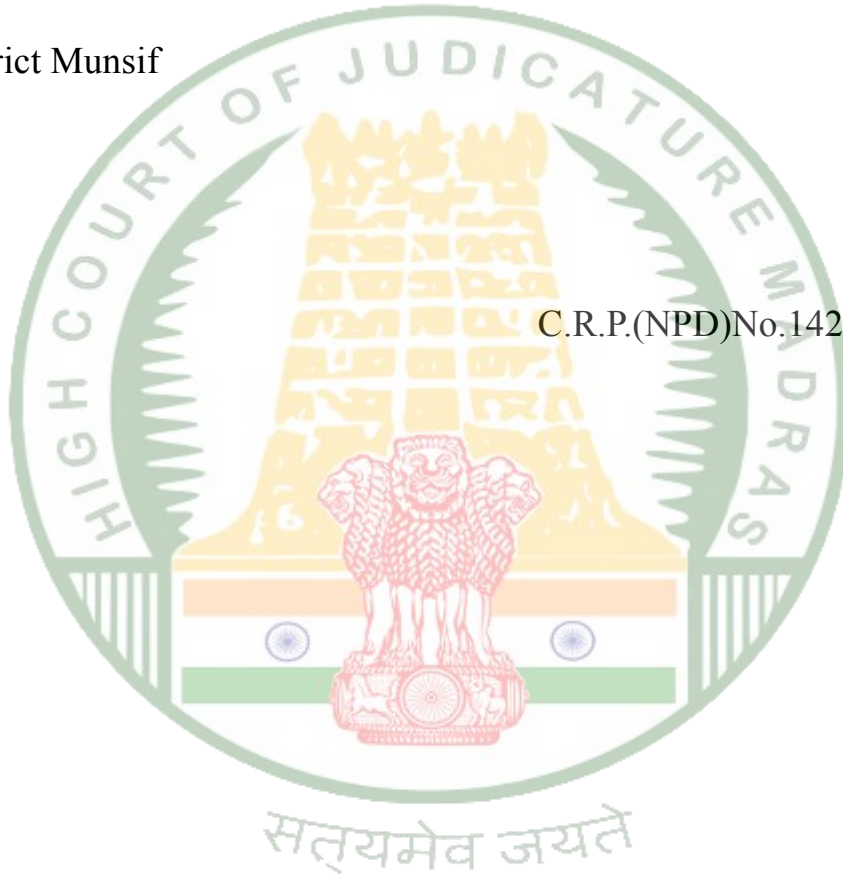
C.R.P.(NPD)No.142 of 2017

V.M.VELUMANI, J.

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To

The District Munsif
Attur.



C.R.P.(NPD)No.142 of 2017

13.08.2021

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