

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM

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

C.R.P.(NPD) No.205 of 2017
and C.M.P.No.884 of 2017

M.Pachiyappa Udayar (Deceased)

1. M.Neelakanda Udayar
2. S.Valli Ammal
3. S.Kuppan
4. S.Poongavana Udayar

... Petitioners

Vs.

1. R.Ezhumalai Gounder
2. The State of Tamil Nadu,
Rep by the District Collector,
Thiruvannamalai.
3. The District Revenue Officer,
Thiruvannamalai
4. The Thasildar,
Thiruvannamalai.

... Respondents

Prayer :- Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and final order dated 27.07.2016 made in I.A.No.132 of 2014 in O.S.No.331 of 2009 on the file of the Principal District Munsif Court,

Thiruvannamalai and consequently condone the delay in filing the restoration petition and allow this Civil Revision Petition.

For Petitioner : Mr.R.Sankarakutralingam
For Respondents
For R1 : Mr.P.Vasanth
For R2-R4 : Mr.S.Jaganathan
Government Advocate (CS)

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 27.07.2016 passed by the learned Principal District Munsif, Thiruvannamalai, in I.A.No.132 of 2014 in O.S.No.331 of 2009, thereby dismissing the petition to condone the delay in filing the restoration petition.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit for declaration and injunction in respect of the suit property. After filing the written statement, the petitioners did not appear before the trial Court after commencing the trial. Therefore, the suit is dismissed for default on 06.08.2010. On 04.09.2010, the petitioners herein filed petition to restore the suit. After serving the copy of

the restoration petition to the respondents, they did not pursue the application and kept it in abeyance. Thereafter, the first plaintiff viz., Pachiyappa Udayar died on 31.10.2010. After the period of 1201 days, the petitioners again filed this petition to restore the suit.

3. On perusal of affidavit filed in support of the condone delay petition, the petitioners stated that since from the year 2010 the first plaintiff was suffering from various ailments and he was hospitalized, the petitioners have taken care of him. Therefore, the petitioners could not appear before the trial Court on 06.08.2010 as such the trial Court dismissed the suit for default. Due to the age ailments the first plaintiff died on 31.10.2010. Therefore, the petitioners could not be able to collect the details about the legal representative of the deceased plaintiff and also could not contact their counsel to file petition in time.

4. It is seen that the deceased first plaintiff and the second plaintiff viz., the first petitioner herein are brothers. It cannot be said that the first petitioner also could not be able to collect the details of the deceased

first plaintiff. Further the petitioners also suppressed the fact that earlier petition filed for restoration, in support of the affidavit of the third petitioner herein. Therefore there is no sufficient reason has been stated in the affidavit to condone the delay of 1201 days in filing the petition. The petitioners have absolutely no interest to pursue the suit for the several allegations made in the plaint. Therefore, the trial Court rightly dismissed the petition and this Court finds no illegality or infirmity in the order passed by the Court below.

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

17.02.2021

Internet : Yes

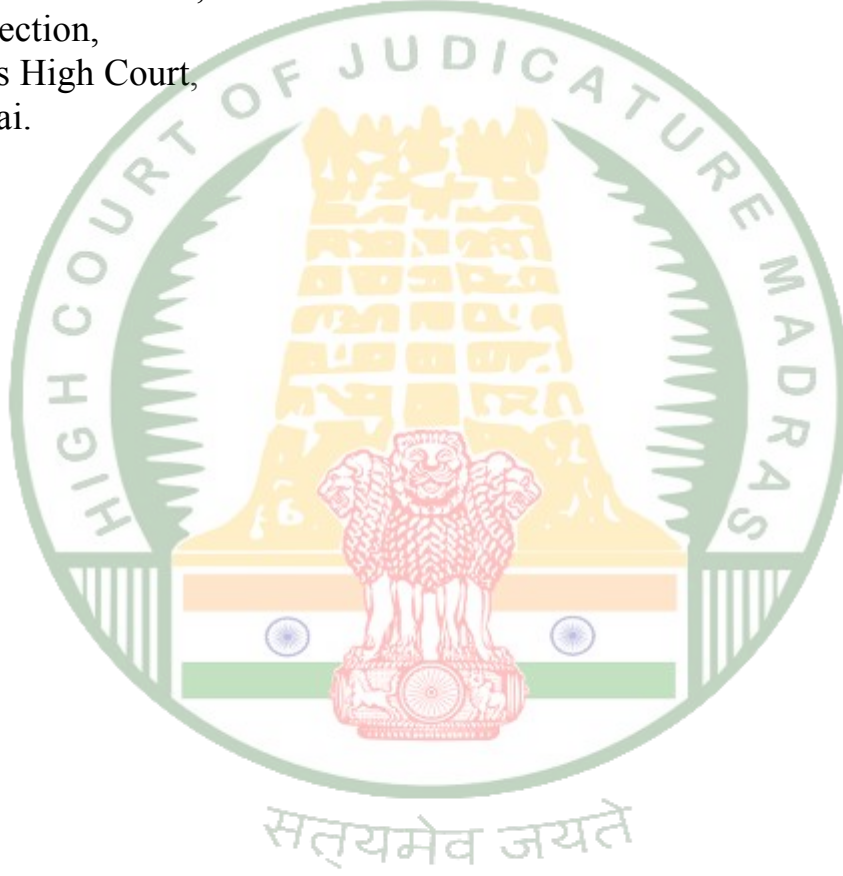
Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The Principal District Munsif,
Thiruvannamalai.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

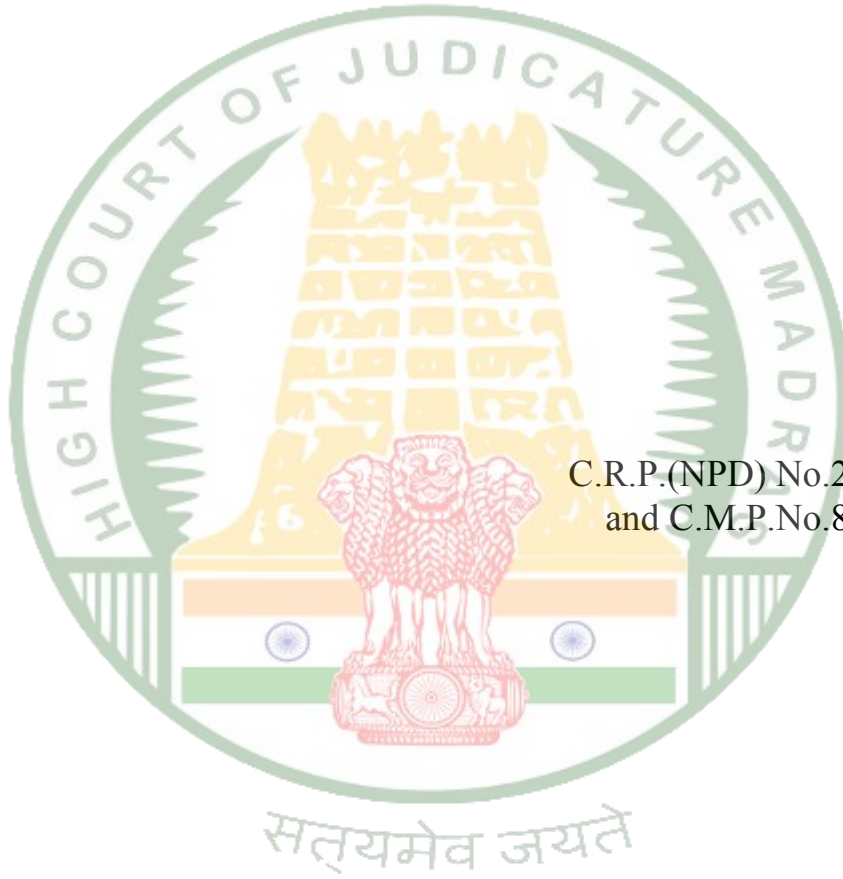


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