

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM

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

CRP.NPD.No.3623 of 2017

Padmavathi(dead)

1.Kamalanathan

2.Muthammal

..Petitioners

Vs.

1.Pavunammal

2.Somasundaram

3.Subramani

4.Angammal

(4th respondent is a formal party
she is given up)

..Respondents

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the fair and decreetal order dated 12.06.2017 passed in IA.No.725 of 2017 in OS.No.292 of 2006 on the file of the learned District Munsif Court, Madurantagam.

For Petitioner : Mr.K.Govi Ganesan

For Respondents

For R1 to 3 : Mr.S.Senthilnathan
R4 : given up

ORDER

This civil revision petition is arising out of fair and decreetal order dated 12.06.2017 passed in IA.No.725 of 2017 in OS.No.292 of 2006 on the file of the learned District Munsif Court, Madurantagam thereby dismissing the petition to condone the delay in filing the restore petition of the suit.

2. The petitioners are the plaintiffs. They filed suit as against the respondents 1 to 3 herein for declaration and injunction. After examination of PW1, the petitioners failed to instruct their counsel to proceed with the case. Therefore, the counsel for the petitioners reported no instruction before the trial court. Hence, the suit was dismissed for default on 11.08.2015. Thereafter with delay of 26 days, the petitioners filed petition to restore the suit.

3. On perusal of the affidavit filed in support of the condone delay petition revealed that the first petitioner had neuro problem and he was taking treatment at Madras. Therefore, he could not able to contact his counsel and was not able to appear before the trial court, whereas on perusal of the counter filed by the respondents herein revealed that no

doctor certificate was filed to prove the alleged illness. Further the suit was filed in the year 2006. After examination of PW1, the petitioners failed to let in evidence on their side. Their counsel also reported no instruction. Further revealed that the petitioners already filed petition for amendment of plaint and the same was dismissed and aggrieved by the same, they also filed civil revision petition before this Court and the same was also dismissed. One after other, petitions are repeatedly filed by the petitioners and dragged the proceedings.

4. The court below dismissed the petition only on the ground that the petitioners failed to produce any proof to show that the first petitioner was suffering from neuro problem and had taken treatment at Madras. The suit is filed for declaration and injunction and as such the petitioners may be given one more opportunity to proceed with their case. Further, the fourth plaintiff does not want to challenge the order passed by the court below and as such she has been shown as a respondent in the present civil revision petition.

5. Accordingly, this civil revision petition is allowed and the order dated 12.06.2017 passed in IA.No.725 of 2017 in OS.No.292 of

2006 on the file of the learned District Munsif Court, Madurantagam is set aside insofar as the petitioners alone. Further, considering that the suit is of the year 2006, the trial court is directed to complete the trial within a period of six months from the date of receipt of copy of this order. It is made clear that if the petitioners do not cooperate for the trial, the trial court is directed to dispose of the suit accordingly. No order as to costs.

23.02.2021

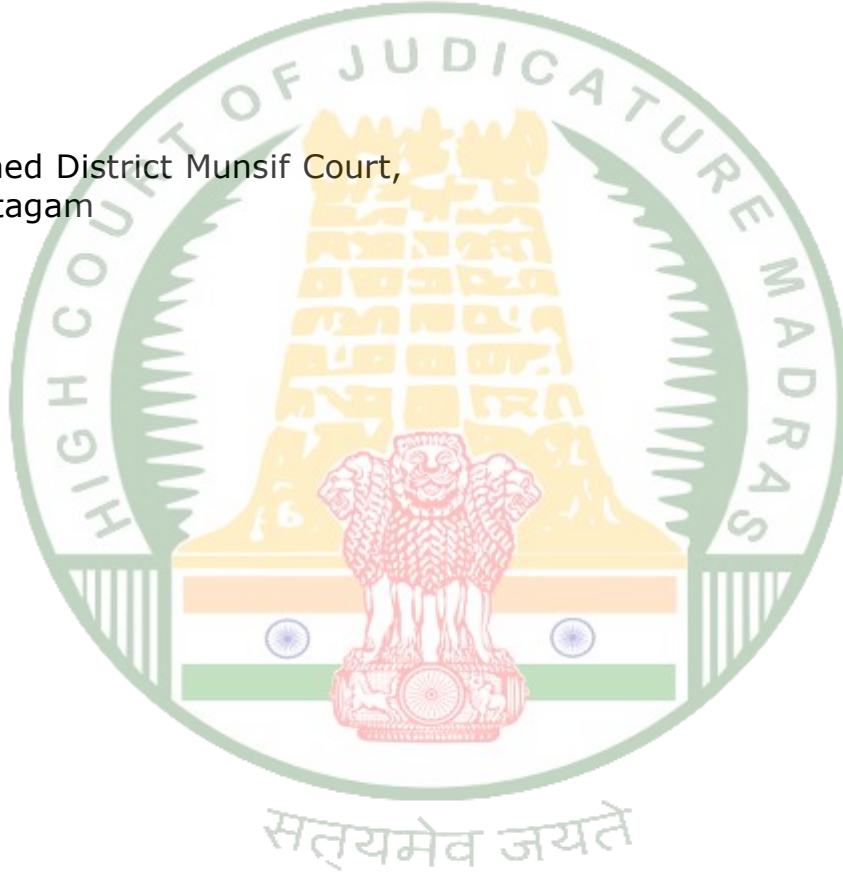
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To

The learned District Munsif Court,
Madurantagam



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G.K.ILANTHIRAIYAN,J.

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