



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2024

CORAM:

THE HONOURABLE MR JUSTICE C.KUMARAPPAN

C.R.P(NPD)(MD)No.1313 of 2014

and

M.P(MD)No.1 of 2014

U.Delhousi Prabhu

... Petitioner/Appellant/Petitioner/Second
Defendant

.Vs.

1.V.Pandimuthu(died)

2.Saroja

3.Murugan

4.Kumar

5.Sudhakar

(Respondents 2 to 5 are brought on record as LR's of the deceased sole respondent as per order of this Court made in C.M.P(MD)Nos.4284,4288 and 4290 of 2023, dated 7.7.2023)

...Respondents/Respondents/Respondents/
Plaintiffs

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure

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Code praying this Court to set aside the fair and decretal order made in C.M.A.No.2 of 2011, dated 25.09.2013, on the file of Sub Court, Theni preferred against the order made in I.A.No.153 of 2009 in O.S.No.348 of 2004, dated 24.08.2010, on the file of District Munsif-cum-Judicial Magistrate, Bodinayakanur.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.K.Guhan

ORDER

This Civil Revision Petition is filed seeking to set aside the fair and decretal order made in C.M.A.No.2 of 2011, dated 25.09.2013, on the file of Sub Court, Theni preferred against the order made in I.A.No.153 of 2009 in O.S.No. 348 of 2004, dated 24.08.2010, on the file of District Munsif-cum-Judicial Magistrate, Bodinayakanur.

2.The Petitioner is the second defendant before the Trial Court. The plaintiff is the first respondent, who has filed a suit for specific performance, in which, the Petitioner/second defendant inspite of receipt of summons, did not appear before the Court below. Hence the trial Court set him exparte and an



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exparte decree was passed on 18.12.2007.

3.The learned counsel for the Petitioner would submit that he was not at all in the village and in the address mentioned in the Petition, between 2003 to 2009. Therefore the submissions made by the respondents that the summons was refused to be received by the Petitioner could not be accepted at all.

4.However, the learned counsel for the respondents would invite the attention of this Court to the deposition of R.W.1 to R.W.3, who are the Process Servers and bailiffs of the concerned Court, who has categorically stated that inspite of their best efforts, they were not able to serve the summons and the Petitioner refused to receive the summons. Only on that ground, the first appellate Court has arrived at a conclusion that the Petitioner has not established any ground to set aside the exparte decree passed by the trial Court.

5.The submission made by the learned counsel for the Petitioner that he was not availble in the place where the summons was served, between 2003 to 2009, has not been examined through document, except photo. As observed by



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the trial Court, the Petitioner has not established the neighbour to vouch the fact that at the relevant point of time, the Petitioner was in the village and the summons was not served to him.

6. At this juncture, the learned counsel for the Petitioner would rely upon the decision in ***Sushil Kumar Sabharwal .vs. Gurpreet Singh and others reported in AIR 2002 Supreme Court 2370*** and would contend that the Process Server has not followed the procedure as contemplated under Order V Rule 17 of Civil Procedure Code. He would further submit that the mere refusal of the Petitioner to receive the summons will not give any cause to the trial Court to pass an ex parte decree, until the summon affixed in conspicuous place. This Court has no grievance over the decision cited by the Petitioner, which nothing but reiteration of the provisions of Order 5 Rule 17 of Civil Procedure Code.

7. According to the Petitioner, he was not at all residing in the said village, whereas, through examination of Process Servers, the plaintiff has established the fact that the Petitioner/second defendant was residing in the address at the relevant point of time and refused to receive the process. Finding falsity on the submissions made by the learned counsel for the Petitioner, the trial



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Court has rightly dismissed the application. Therefore the ruling cited by the learned counsel for the Petitioner is not applicable to the facts of the present case. In view of the above facts, this Court finds no perversity or irregularity in the findings of the trial Court, warranting interference by this Court and therefore the Civil Revision Petition is liable to be dismissed.

8.For the reasons stated above, the Civil Revision Petition stands dismissed. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

31.01.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

- 1.The Sub-Judge,
Theni.
- 2.The District Munsif-cum-Judicial Magistrate,
Bodinayakanur.

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3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.KUMARAPPAN,J.

vsn

ORDER MADE IN

C.R.P(NPD)(MD)No.1313 of 2014
and
M.P(MD)No.1 of 2014



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