

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE  
and  
THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.S.A.No.264 of 2015

1.Indraniammal  
2.K.Vadivelu  
3.K.Kumar  
4.D.Nirmala  
5.S.Vijaya .. Appellants/Defendants 1 to 4 and 7

versus

1.K.Ravi.  
2.G.Ravi.  
3.S.Vathsala .. Respondents/5<sup>th</sup> and 6<sup>th</sup> Defendants

Appeal filed under Order 36 Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent Act, against the Judgment and Decree made in A.No.2499 of 2015 in C.S.No.132/2013 dated 06.07.2015, on the file of this Court. A. No.2499/15: Appellant praying this Court pleased to condone the delay of 137 days in filing the application to set aside the exparte decree passed in C.S.NO.132/13 dt. 519/14

For Appellants .. Mr.M.Chinnaswamy  
For Respondents .. Mr.M.Kumaraswami for R.1

सत्यमेव जयते  
J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

Heard the learned counsel for the parties.

2. It is agreed by the learned counsel for the first respondent (the contesting one) that the impugned order may be set aside and the delay in filing the application under Order IX Rule 13 be condoned.

3. In view of the aforesaid, the next question that would arise would be on the merits of the application under Order IX Rule 13 CPC, as the learned single Judge has held that the said application is not maintainable as the decree is not ex parte.

4. The aforesaid finding indisputably does not reflect from the record and thus, it is agreed that the application under Order IX Rule 13 also be allowed. Ordered accordingly.

5. The only aspect urged by the learned counsel for the first respondent is that the trial should be expedited.

6. On our query, we are informed that even the issues have not been framed. We thus direct the suit to be placed before the learned Judge as per the roster for framing of issues on 29.02.2016, whereafter the learned Judge would set down the schedule for trial.

7. The appeal is accordingly allowed, leaving the parties to bear their own costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ksr

To

1. The Sub Assistant Registrar,  
Original Side, High Court, Madras.

+ 1 cc to Mr.M. Kumarasamy, Advocate SR.7346

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KSJ(CO)  
EU 17.02.16

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