

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

CMA.No.1803 of 2015

1.Yuvarani
2.Kathiresan

... Appellants

vs.

1.Sellammal
2.Natarajan
3.E.R.Sakthivel

... Respondents

Civil Miscellaneous Petition filed under Order XLIII Rule 1(C) of the Code of Civil Procedure prayed this Court to set aside the order and decreetal order dated 09.10.2014 passed in I.A.No.444 of 2013 in O.S.No.135 of 2012 on the file of the Principle District Court, Namakkal and the revision be allowed with costs.

For Appellants : Mr.N.C.Ashok Kumar

For Respondents: Mr.M.S.Palaniswamy for R1 & R2
Mr.S.P.Yuvaraj for R3

ORDER

Challenging the fair and decreetal order passed in I.A.No.444 of 2013 in O.S.No.135 of 2012 on the file of the Principle District Court, Namakkal, the appellants have filed the above appeal.

2. The plaintiffs have filed the suit in O.S.No.135 of 2012 for partition, permanent injunction and to cancel the Sale Deed dated 19.02.2009. The defendants filed the written statement and were contesting the suit.

3. When the suit was posted for trial on 12.06.2013, since the plaintiffs failed to appear before the Trial Court, the suit was dismissed for default. Thereafter, the plaintiffs filed an application in I.A.No.444 of 2013 under Order 9, Rule 9 of CPC to restore the suit, which was dismissed for default

on 12.06.2013.

4. In the affidavit filed in support of the application, the plaintiffs have stated that their mother was suffering from viral fever and therefore, they could not appear before the Trial Court on 12.06.2013.

5. The defendants filed their counter and disputed the averments stated in the affidavit filed in support of the petition.

6. The Trial Court dismissed the application finding that the plaintiffs have not established their contention by producing any documentary evidence that their mother was suffering from viral fever.

7. It is pertinent to note that the application has been filed within thirty days from the date of dismissal of the suit for non prosecution.

8. The appellant has categorically stated that she was suffering from viral fever and therefore, she could not appear before the Trial Court for adducing the evidence.

9. As already stated, the plaintiffs have filed the suit for partition and for other relief. In such circumstances, the Trial Court could have taken a lenient view and could have restored the suit enabling the parties to get a decree on merits. If the suit filed by the plaintiffs for partition is dismissed, the rights of the minors would be affected. In such view of the matter and in the interest of the justice, I am of the view that the plaintiffs can be given one more opportunity to prosecute the appeal on merits. When the guardian of the plaintiffs has stated that she was suffering from viral fever, the reason given by her could have been accepted by the Trial Court. This Court is satisfied with the reason stated in the affidavit filed in IA.No.444 of 2013.

10. In these circumstances, the fair and decreetal order passed in IA.No.444 of 2013 in OS.No.135 of 2012 is set aside and the application in IA.No.444 of 2013 stands allowed and the suit in OS.No.135 of 2012 is restored to file. The Principle District Judge is directed to dispose of the suit in O.S.No.135 of , on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

With this observations, the appeal stands allowed. No costs.

Sd/-

ASST. REGISTRAR

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SUB ASST. REGISTRAR

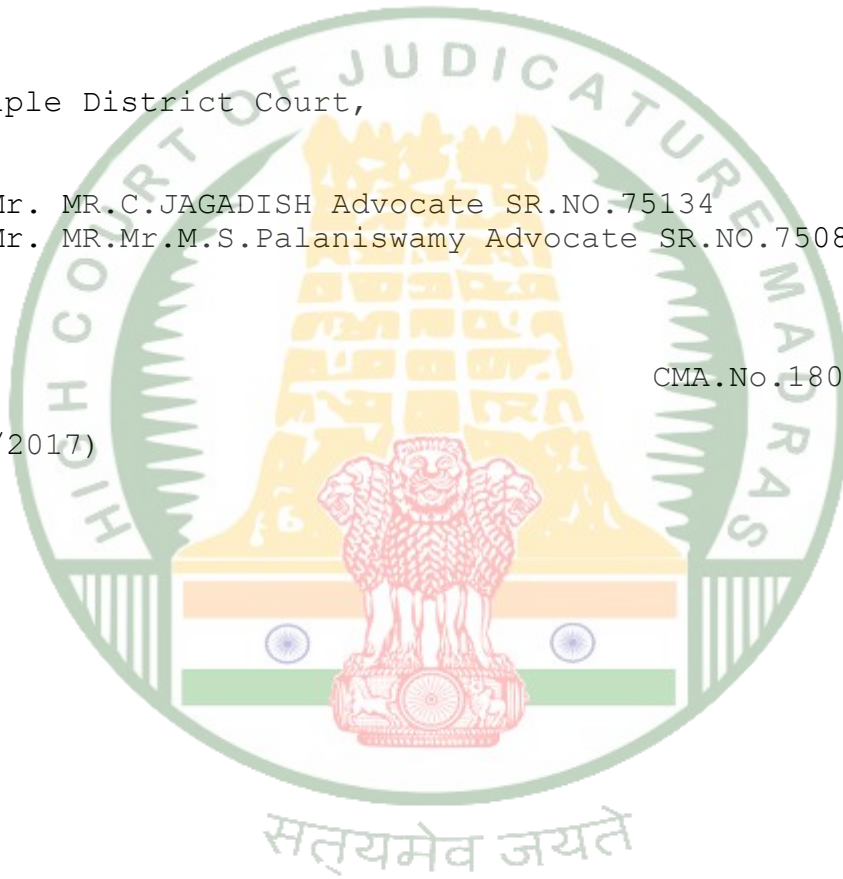
To
The Principle District Court,
Namakkal.

+1 CC to Mr. MR.C.JAGADISH Advocate SR.NO.75134

+1 CC to Mr. MR.Mr.M.S.Palaniswamy Advocate SR.NO.75089

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RK(CO)
VC (11/11/2017)



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