

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE M.S. RAMESH

Civil Miscellaneous Appeal No. 2003 of 2016

1. Sridhar
2. Pachaiyammal

.. Appellants

Versus

1. Archana
2. Minor. Mithun Vaseegaran
Son of Dr. A. Archana
represented by his next friend/mother
Dr. A. Archana

.. Respondents

Appeal filed under Section 19 of the Family Courts Act, 1984 against the fair and decreetal order dated 15.06.2016 passed in I.A. No. 79 of 2016 in O.S. No. 1 of 2016 by the Family Court Judge at Dharmapuri

For Appellants : Mr. S. Vijay Anand
For Respondents : Mrs. R. Poornima

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY R. SUBBIAH, J)

The appellants are the defendants in O.S. No. 1 of 2016 on the file of Family Court, Dharmapuri. The first appellant is the husband of the first respondent. The second appellant is the mother of the first appellant. The said suit was filed by the first respondent herein contending that she is the legally wedded wife of the first appellant and sought for issuing appropriate direction for payment of past and future maintenance, to create a charge in the property owned by the first appellant

and for dividing the property into two equal shares by metes and bounds.

2. Originally, the said suit was filed before the Additional District Judge, Dharmapuri. Subsequently, at the instance of the appellants herein, this Court, by order dated 09.12.2015 passed in Tr.C.M.P. No. 868 of 2015, transferred the suit to the file of Family Court, Dharmapuri.

3. When the suit in O.S. No. 1 of 2016 was taken up for hearing on 29.02.2016, since there was no representation for the defendants/appellants herein, they were set exparte. In order to set aside the exparte decree dated 29.02.2016, the appellants herein have filed I.A. No. 79 of 2016 in O.S. No. 1 of 2016 on 23.03.2016. In the said application, on notice, the plaintiffs/respondents herein have filed a memo stating that they have no objection for allowing the application to set aside the exparte decree. In spite of the memo filed by the plaintiffs/respondents, the Family Court, Dharmapuri has passed the order dated 15.06.2016 dismissing the I.A. No. 79 of 2016 in O.S. No. 1 of 2016 on the ground that it lacks merits. Aggrieved by the same, the appellants are before this Court with this Civil Miscellaneous Appeal.

4. The learned counsel appearing for the appellants would submit that the respondents in I.A. No. 79 of 2016 in O.S. No. 1 of 2016, upon notice, have filed a memo stating that they have no objection for allowing the application to set aside the exparte decree dated 29.02.2016. In spite of such memo filed by the respondents, the Family Court dismissed the application on the ground that it lacks bonafides. The learned counsel for the appellants therefore prayed this Court to

set aside the order dated 15.06.2016 and to allow the appeal

5. On the above submission of the learned counsel for the appellants, we have heard the learned counsel for the respondents and perused the materials placed on record.

6. On perusal of the records, we have noticed that the respondents themselves have filed a memo stating that they have no objection for allowing the application to set aside the exparte decree dated. Inspite of the same, the Family Court, Dharmapuri dismissed the application to set aside the exparte decree dated 29.02.2016. Therefore, in order to render complete justice, we are of the view that the order dated 15.06.2016 passed by the Family Court, Dharmapuri is to be set aside on condition that the appellants pay a sum of Rs.10,000/- as costs to the plaintiffs/respondents herein.

7. In the result, the order dated 15.06.2016 passed in I.A. No. 79 of 2016 in O.S. No. 1 of 2016 on the file of Family Court, Dharmapuri is set aside on condition the defendants/appellants pay to the plaintiffs/respondents a sum of Rs.10,000/- towards costs within a period of two weeks from the date of receipt of a copy of this Judgment. Consequently, CMP No. 14468 of 2016 is closed.

Post the appeal for reporting compliance after two weeks.

(R.P.S.J.) (M.S.R.J.)

01-06-2017

rsh

Speaking / Non-speaking Order
To
The Presiding Officer
Family Court
Dharmapuri

R. SUBBIAH, J
and
M.S. RAMESH, J

rsh

CMA No. 2003 of 2016

01-06-2017

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