

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2468 of 2014 & MP No.1 of 2014
and CMP No.17751 of 2016

1. Shanmugam
 2. S.Bhaskaran
- ..Appellants (Plaintiffs 2 & 3)

Vs.

1. S.Venkatesan @ Thiruvengkataraj
 2. Swarnalatha
 3. Lakshmi
 4. Banu Rekha
 5. B.Radha Bai
 6. B.Chandra Mohan
 7. B.Pingalavan
 8. Mahendran
 9. Kautilyan
 - 10.Vijalakshmi
- ..Respondents (Defendants 2 to 11)

This appeal is filed under Order 43 Rule 1(c) read with Section 104 of the Civil Procedure Code, against the fair and decretal Order of the Learned I Additional District Judge, Erode dated 04.09.2013 in I.A.1090 of 2006 in O.S.No.40 of 2004.

For Appellants :Mr.T.M.Hariharan

For Respondents :Mr.Mukund
for M/s.Sarvabhauman Associates

J U D G E M E N T

This appeal is by the plaintiff in OS No.40 of 2004, challenging an order dismissing their application in IA No.1090 of 2006, filed under Order 9 Rule 9 of the Code of Civil Procedure, seeking restoration of the suit that was dismissed for default on 01.11.2006. The reason assigned is that the counsel for the plaintiff was not well, therefore, he could not attend the hearing on the said date.

2. The said application was apposed by the respondents on the ground that the suit was filed in the year 2003 and it was posted for hearing on several occasions but the plaintiffs are not ready to get along with the case.

3. The learned Trial Judge, namely 1st Additional District Judge, Erode, after hearing the application dismissed the same by holding that the cause assigned for the absence of the plaintiff that their counsel was not well on 01.11.2006 is not sufficient.

4. I am unable to subscribe to the findings of the learned Additional District Judge. The suit was dismissed for default on 01.11.2006, the application for restoration was filed within the 30 days period prescribed under the Limitation Act. The respondents have not specifically denied the reason assigned in the affidavit filed in support of the application, namely the illness of the counsel. That being so, the learned Trial Judge was not right in dismissing the application to restore the suit filed for partition in which valuable rights of the parties is involved.

5. Therefore, I am of the considered opinion that the order of the trial Court dismissing the application in IA No.1090 of 2006 is liable to be set aside, and accordingly the order of the learned Trial Judge is set aside, the appeal is allowed. However, considering the circumstances, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

6. Considering the fact that the suit was filed in the year 2004, there will be a direction to the Trial Court, namely the 1st Additional District Judge, Erode, to dispose the suit within a period of 8 months from the date of receipt of a copy of this order and report such disposal to this Court.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jv

To

1. The I Additional District Judge,
Erode.

2. The Section Officer,
V.R.Section,
High Court, Madras.

3.The Section Officer,
Judicial Section,
High Court, Madras.

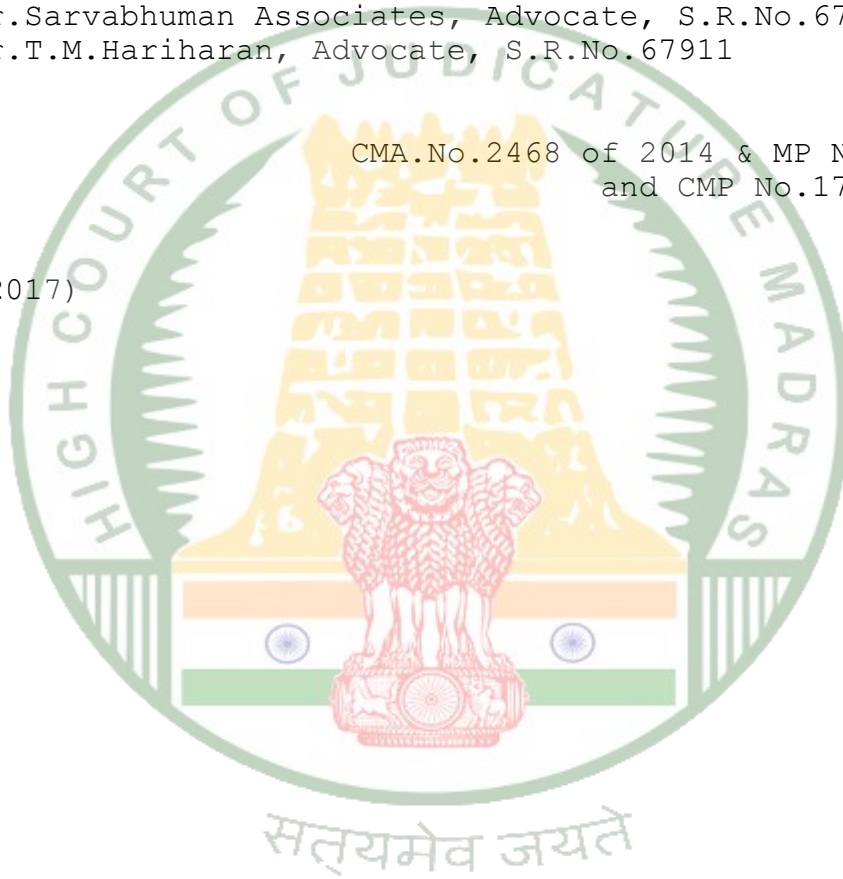
4.The Registrar Judicial,
High Court, Madras-104.

+1cc to Mr.Sarvabhuman Associates, Advocate, S.R.No.67648

+1cc to Mr.T.M.Hariharan, Advocate, S.R.No.67911

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SV(CO)
GN(11/10/2017)



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