

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 07.06.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**C.M.A. (MD) No.441 of 2017****and****C.M.P. (MD) No.4740 of 2017**

1.Nataraj@ Natesan

2.S.Siddharth

... Appellants/Petitioner/

Third Party/Third Party

Vs.

1.Karur Balaji Finance,

represented by its Partner &

Power of Attorney,

V.Parameswaran,

Son of Velusamy Gounder,

Covai Main Road,

Opp. To L.G.B.Petrol Bunk,

Karur.

... 1st Respondent/1st Respondent/
Petitioner/Plaintiff

2.Manju Colours,

represented by its Partner,

N.Sivasamy,

Son of Natraj @ Natesan,

S.K.S.Nagar,

Karuppampalayam,

Appipalayam Post,

Karur Taluk & District.

3.N.Sivasamy

4.Gomathy

... Respondents 2 to 4/Respondents 2 to 4/
Respondents/Defendants

Prayer: Appeal filed under Order XLIII Rule 1(C) of the Civil Procedure Code against the order and Decretal order dated 10.01.2017 passed in E.A.No.15 of 2016 in E.A.No.65 of 2015 in E.P.No.156 of 2012 in O.S.No.14 of 2005 on the file of the Principal District Court, Karur.

For Appellant

: Mr.S.Anand Chandrasekar

for M/s Sarvabhauman Associates

For Respondents

: Mr.K.Suresh for R.1

**JUDGMENT**

The appellants are the third party claimants. This appeal is directed against the order dismissing E.A.No.15 of 2016, which is an application filed under Order 9 Rule 9 of the Code of Civil Procedure, seeking restoration of E.A.No.65 of 2015 (filed under Order 21 Rule 58 of the Code of Civil Procedure by the appellants herein). E.A.NO.65 of 2015 was dismissed for default on 26.02.2016.

2. The first respondent had obtained a decree against the respondents 2 to 4 in O.S.No.14 of 2005. The appellants who are the father and son of the third respondent, have filed an application under Order 21 Rule 58 of the Code of Civil Procedure claiming that the properties ought to be sold are joint family properties and they have a share in the said properties.

3. It is seen from the records that the present E.P.No.156 of 2012 is actually a third execution petition. Originally, the decree holder filed E.P.No.44 of 2007 for attachment and sale of the same properties. The present appellants had filed E.A.No.45 of 2009 under Order 21 Rule 58 of the Code of Civil Procedure claiming the very same right which they now seek in E.A.No.65 of 2015.

4. It appears that E.A.No.45 of 2009 was dismissed for default on 19.07.2010. The appellants had filed E.A.No.48 of 2014 seeking condonation of delay in seeking to restore E.A.No.45 of 2009. The said application came to be dismissed on 24.04.2015 after full contest. Thereafter, the present application in E.A.No.65 of 2015 has been filed, which also came to be dismissed for default on 26.02.2016.

5. The learned trial Judge had considered the above and held that the present application is, in fact, barred under Order 9 Rule 9 of the Code of Civil Procedure. The learned trial Judge dismissed the petition for restoration of E.A.No.65 of 2015 solely on the ground that it is an attempt to protract the proceedings.

6. I have heard Mr.S.Anand Chandrasekar, learned Counsel for the appellants.

7. The learned Counsel for the appellants would contend that there was no delay in filing the present application for restoration. That by itself, may not rescue the appellants. In fact, E.A.No.65 of 2015 is a second application filed under Order 21 Rule 58 of the Code of Civil Procedure. The appellants had earlier filed E.A.No.45 of 2009 for the very same relief which has been dismissed for default and the attempt of the appellants to have it restored had also failed.

8. Therefore, the present application, in my considered opinion, is barred under Order 9 Rule 9 of the Code of Civil Procedure and I do not see any merit in this appeal.



9. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.

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Sd/-

Assistant Registrar(RTI)

Sub Assistant Registrar

To

1.The Principal District Judge, Karur.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.Sarvabhauman Associates Advocate in SR. No.59132

+1cc to M/s.K.SURESH Advocate in SR. No.59098

RSB

JS/GT/SAR.2/20.06.2017/3P-5C

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and

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