

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.1799 of 2018
and CMP.No.13850 of 2018

1.K.K.Chandran
2.C.Sellakodi
3.K.K.Sakthivel
4.S.Arulmozhi
5.K.K.Murthy
6.M.Banumathi

... Appellants

Vs.

1.P.Periyasamy
2.K.Ramayal
3.K.P.Ravi
4.V.Brinda

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (c) of CPC. to set aside the fair and decretal order dated 12.01.2018 made in I.A.No.1384 of 2017 in O.S.No.34 of 2015 on the file of II Additional District and Sessions Court, Tiruppur.

For Appellants : Mr.N.Manokaran
For Respondents : Mr.D.Raghu
for Mr.D.Gopal

JUDGMENT

The appellants herein have lost their application filed under Order 9 Rule 13 for setting aside the decree for specific performance passed in favour of the respondents.

2. In the affidavit filed in support of the application, it is averred that the petitioners/appellants were not in a position to contact their counsel, due to which, the respondents/plaintiffs could not be cross-examined, and owing to which the suit was decreed exparte on 03.10.2016.

3. In response, the learned counsel for the respondents submitted, even going by the affidavit, the appellants were set exparte on 02.09.2016 and an exparte decree was passed after 32 days on 03.10.2016 and this is the third time the appellants have allowed the exparte decree to be passed in the suit and it has become a pattern with these appellants to defeat and delay the ends of justice.

4. Since what is involved in the suit is a substantial right to property, this Court wants to give one last opportunity for the appellants to participate in the trial. Therefore, this Court chooses to allow this appeal on the following two conditions :

- a) that the appellants shall pay a cost of Rs.10,000/- (Rupees Ten Thousand only) to the respondents on or before 24.08.2018
- b) that the appellants shall cross-examine the plaintiffs on 24.08.2018.

P.W.1 is directed to appear before the Court on 24.08.2018.

5. Except for force majeure vis majeure events preventing the trial of the case, any default in any of the conditions stipulated against the appellants herein, would visit the consequence, where the decree already dated 03.10.2016 would stand confirmed. The trial Court is further directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

6. In the result, the appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

ds

WEB COPY

To:

1.The II Additional District and Sessions Court,
Tiruppur.

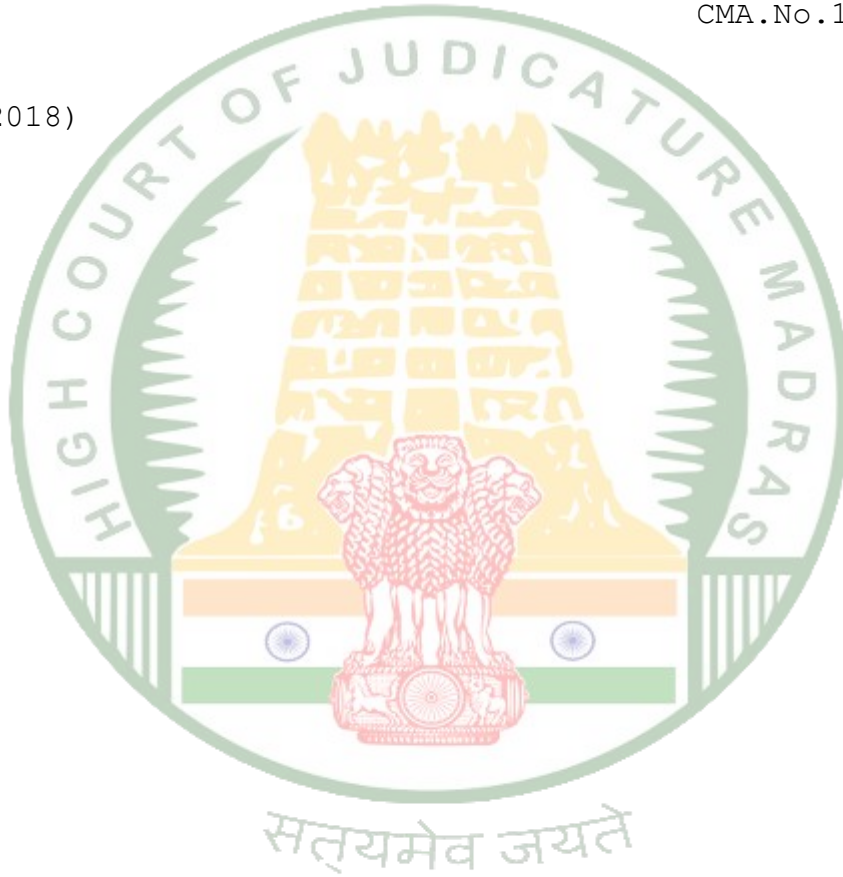
2.The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.D.GOPAL, Advocate, S.R.No.56332

+1cc to Mr.NMANOKARAN, Advocate, S.R.No. 56526

CMA.No.1799 of 2018

VSN(CO)
TR(21/08/2018)



WEB COPY