

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(NPD).No.4272 of 2017
and CMP.No.20029 of 2017

Velammal (Died)
Rukmani

.. Petitioners

Vs

1.Perumayee
2.Mohanasankar

.. Respondents

PRAYER

Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Final Order passed in CMA.No.18 of 2016 dated 15.06.2017 on the file of the IIIrd Additional District Court, Salem reversing the fair and final order in IA.No.408 of 2015 in OS.No.78 of 2009 dated 14.07.2016 on the file of the Subordinate Court, Sankari to set aside the same.

For Petitioners : Mr.A.Sundaravadhanan

For Respondents : Mr.R.Marudhachalamurthy

ORDER

According to the revision petitioner, the revision petitioner

has filed a suit in OS.No.78 of 2009 on the file of Sub Court, Sankari for partition. In the aforesaid suit, the respondents were not able to appear on the hearing date. Hence, the respondents were set ex-parte and consequently, ex-parte decree was passed. The respondents have filed an application in IA.No.408 of 2015 to set aside the ex-parte decree. The said application was dismissed by the trial court. Challenging the said order, the respondents have filed an appeal in CMA.No.18 of 2016 on the file of III Additional District Judge, Salem and by order dated 15.06.2017, the Appellate court has set aside the order passed by the trial court and allowed the appeal. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. According to the learned counsel for the revision petitioner, the revision petitioner has not received notice from the respondents in the aforesaid appeal. Without providing opportunity to the revision petitioner, the Appellate court has allowed the appeal. Therefore, the order passed by the Appellate court is liable to be set aside.

3. Per contra, the learned counsel for the respondents

would submit that the respondents have served notice in the address mentioned in the plaint. After the death of the first plaintiff, the revision petitioner has shifted his residence to the present address.

4. In view of the above said fact and submissions of the learned counsel for the petitioner, it is an admitted fact that the revision petitioner was not residing in the address mentioned in the plaint. After the death of the petitioner's mother, she shifted his residence at the present address at 1D, URC Apartment, Rajiv Nagar, Sengodampalayam, Dhindal, Erode. Therefore, it is clear, the revision petitioner has not received notice in the aforesaid appeal and the revision petitioner could not able to before the Appellate court to defend the case. Therefore, the revision petitioner has rightly pointed that there is a violation of principles of natural justice. On this ground, the order passed by the Appellate court is liable to be set aside.

5. On instructions, both the counsel undertake to cooperate with the disposal of the appeal within the time as may be fixed by this Court. The learned counsel for the revision petitioner undertakes to file vakalat within one week from the date of receipt of a copy of this Order.

6. In fine, the order passed by the Appellate court in CMA.No.18 of 2016 dated 15.06.2017 is set aside and the Civil Revision Petition is allowed with a direction to the III Additional District Judge, Salem to dispose of the appeal in accordance with law within a period of three weeks from the date of receipt of a copy of this Order. Consequently, the connected miscellaneous petition is closed. No costs.

18.01.2018

Speaking/Non-Speaking order
Index :Yes/No
Internet:Yes/No
lok



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To

1. The IIIrd Additional District Court,
Salem
2. The Subordinate Court,
Sankari



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D. KRISHNAKUMAR J.,



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