

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.810 of 2007

Maria Regina Joseph

.. Appellant/1st Defendant

vs

1.Maxim Joseph

..1st Respondent/Plaintiff

2.P.Seholastica

3.P.Matilda

4.P.Philomena Freeda

5.P.Leo Antony Macdonald .. Respondents 2 to 5/Defendants 2 to 5

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of C.P.C. against the judgment and decree of the learned Appellate Authority and II Additional Subordinate Judge of Coimbatore dated 28.02.2006 in A.S. No.195 of 2005 setting aside the judgment and decree of the learned II Additional District Munsif of Coimbatore dated 29.08.2005 in O.S. No.1766 of 1996 remanding the suit to the Trial Court.

For Appellant : Mr.V.Nicholas

For respondents: Mr.R.Devaraj for R1

सत्यमेव जयते

JUDGMENT

The appeal has been directed against the impugned decretal order dated 28.02.2006 passed in A.S. No.195 of 2005 by the II Additional Sub Court, Coimbatore remanding the matter back to the Trial Court for fresh consideration.

2.The first defendant, having lost the suit, has filed the First Appeal in A.S. No.195 of 2005. After getting the order of remand, the appellant came up to this Court challenging the correctness of the remand order arraying all the defendants before this Court as necessary parties.

3.It is seen that service on respondents 2 to 5 was not taken up by the appellant for the last 12 long years that goes to show that he has not bothered to conduct the case and get an order and he has kept the matter only in the cold storage of the registry. A perusal of the records would show that respondents 2 to 5 were not even ready in notice since the appellant has not taken service of summons on them. At this stage, learned counsel appearing for the appellant, without even filing any document before the Registry, showing a memo, would submit that he is prepared to give up with regard to respondents 2 to 5, which is not the way to conduct the appeal after a lapse of 12 long years. Therefore, this Court, looking the conduct of the appellant, who after obtaining an order of stay of operation of the remand order, kept quite for almost 12 long years, is not inclined to go into the correctness of the impugned order. Accordingly, the appeal stands dismissed. No costs.

4.The Trial Court is directed to dispose of the matter within three months time on day today basis as the suit is of the year 1996 without giving any unnecessary adjournment.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

vga

To

1.The II Additional Subordinate Judge,
Coimbatore.

2.The II Additional District Munsif,
Coimbatore.

+1cc to Mr.Mr.V.Nicholas, Advocate SR.No.69068

+1cc to Mr.R.Devaraj, Advocate SR.No.68562

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RGN (CO)
GMY (21/05/2020)