

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

CMA.No. 2341 of 2010

and

C.M.P.No.6410 of 2016

1.V.Ramamurthi Chettiar

2.Vetrivel (died)

3.Manickammal @ Usharani

4.R.V.Vijayakumar

5.R.V.Manigandan

6.R.V.Sivaraman

... Appellants

(Appellants 4 to 6 brought on record
as LR's of the deceased 2nd Appellant
vide order dated 21.08.18)

-Vs-

1.Rani

2.Jothi

3.Kumari

4.Banumathi

5.Vasantharani

6.Kesavan

7.Minor Nagalakshmi

8.Minor Eswari

Minors are represented by
Father/Next friend Kesavan

.. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Order 43 Rule (1) (d) of C.P.C., against the fair and decreetal order dated 09.04.2010 in I.A.No.1147 of 2009 in O.S.No.55 of 2007 on the file of the Fast Track Court No.I, Additional District Judge, Salem.

For Appellants : Mr.V.Sekar

For Respondents : Ms.N.Premalatha
for Mr.R.Nalliyappan

JUDGMENT

The present Civil Miscellaneous Appeal has been filed under Order 43 Rule (1) (d) of C.P.C., against the fair and decreetal order dated 09.04.2010 on the file of the Fast Track Court No.I, Additional District Judge, Salem in I.A.No.1147 of 2009 in O.S.No.55 of 2007.

2. The appellants are the legal representatives of the deceased/defendant who was set exparte decree by the Court vide order dated 24.06.2009.

3. On 06.07.2009, the appellants filed an application under order 9 Rule 13 and Section 151 of C.P.C, to set aside the exparte decree. By the impugned order, the Court has rejected the application with the following observations:

"6. While perusing the notes paper, the case was posted on 11.06.2009 for trial and since the plaintiff was not present on that date and it was adjourned to 16.06.2009. On 16.06.2009 since the advocate's boycoted the Court, the case was adjourned to 24.06.2009. On 24.06.2009 the plaintiff alone present and defendants were not present and there is no representation on behalf of D1 to D3 and they were called absent and set exparte, suit was decreed with costs as prayed for. So nothing prevented the other defendants to appear in the Court on 24.06.2009 and conduct the trial. No reasons were stated by the petitioners for non appearance of defendants 1 and 3 on 24.06.2009. Further D2 has not produced any document to prove that he was bed-ridden on 24.06.2009 and that is the reason that he could not be present on 24.06.2009. So the reason alleged by the petitioners are not acceptable. Further the petitioners are not diligent in conducting case. There is no merit in allowing this petition."

4. The learned counsel for the appellants has relied upon the decision of this Court in the case of Anbalagan Vs Periasamy and another, 1997 (2) MLJ 69.

5. It is noticed that the respondents had filed O.S.No.55 of 2007 for partition in the suit schedule property. The property in question is in possession of the appellants. The appellants claims that the property has been subsequently settled in favour of the third defendant by the second respondent/defendant. Be that as it may, the issue has to be decided on merits. I therefore set aside the impugned order and

remit the case back to the trial Court and the trial Court shall dispose of the suit within a period of six months from the date of receipt of a copy of this order.

6. In view of the above, this Civil Miscellaneous Appeal stands allowed. Consequently, the connected civil miscellaneous petition is closed.

arb

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Fast Track Court No.I,
Additional District Judge, Salem.

+1cc to Mr.R.Nalliyappan, Advocate, SR.No.76764

+1cc to Mr.S.D.Shivakumaran, Advocate, SR.No.76772

CMA.No. 2341 of 2010
and
C.M.P.No.6410 of 2016

Kak(04/11/2019)



WEB COPY