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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

CMA. No. 3691 of 2010

and

M.P. No. 1 of 2010

M. Palani

... Appellant

Vs

1. Baby
2. Saraswathy
3. Renuka
4. Hamsavalli
5. Sathasivam

... Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Order 43 Rule 1 (u) of the Code of Civil Procedure, to set aside the fair and decretal order dated 03.05.2010 and made in I.A. No. 15 of 2010 in O.S. No. 47 of 1999 on the file of Additional District & Sessions Court (Fast Track Court No.III), Chennai - 1.

For Appellant : Mr. N.A. Nissar Ahmed

For R1, R2, R4 & R5 : No appearance

For R3 : Not ready in notice

JUDGMENT

The Appellant is aggrieved by the impugned Fair and decretal order made in I.A. No. 15 of 2010 in O.S. No. 47 of 1999 dated 03.05.2010 passed by the Additional District & Sessions Judge, (Fast Track Court - III), Chennai - 1.

2. The said application was filed by the Appellant under Order 9 Rule 13 of C.P.C to set aside the ex parte decree passed in the suit on 10.04.2003 in O.S. No. 47 of 1999. The Petitioner had engaged a counsel who failed to file the written statement. Under these circumstances, an ex parte preliminary decree came to be passed on 10.04.2003. Thereafter, a final decree has also been passed on 05.02.2007. That being the case, there is no merits in the present appeal.

3. Paragraph (7) of the impugned order reads as



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"7. Even on perusal of the Final Decree proceeding in I.A. No. 21 of 2006 it appears that notice was served on the Second Respondent for appearing on 28.09.2006 and as he failed to appear he was set exparte. Even after appoint Advocate Commissioner the Advocate Commissioner also had filed his proceedings and has proved that a notice of inspection was sent to him through telegram on 05.11.2006 to the same address where he is said to have been residing at present."

4. Further, the order passed by the lower Court (Additional District Subordinate Judge, Fast Track Court - III, Chennai - 1 is well reasoned and requires no interference.

5. In view of the same, I find no merits in this appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

arb

To

1. The Additional District & Sessions Judge,
(Fast Track Court - III), Chennai - 1.
2. The Section Officer,
Vernacular Section, Madras High Court.

+1cc to Mr.N.A. Nissar Ahmed , Advocate SR.No.99717

C.M.A. No. 3691 of 2010
and
M.P. No. 1 of 2010

LN (CO)
GMY (22/01/2020)