

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1052 of 2017

1.Elayaperumal Padayachi
2.Ayelammal
3.Kamala
4.Kanthamani

...Appellants/Petitioners/
Plaintiffs

Vs.

1.Madhammal
2.Eswari
3.Vasantha
4.Govindhi
5.Maheswari

.... Respondents/Respondents/
Defendants

PRAYER :

Civil Miscellaneous Appeal filed under Order 43 Rule 1 of C.P.C. praying to set aside the Fair and Final order dated 15.12.2016 made in I.A.No.510 of 2016 in O.S.No.281 of 2015 on the file of the IIIrd Additional District Judge, Salem.

For Appellants : Mr.A.Esakkiappan

For respondents 1-5 : Mr.R.Nalleyappan

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants seeking to set aside the Fair and Final order dated 15.12.2016 made in I.A.No.510 of 2016 in O.S.No.281 of 2015 on the file of the IIIrd Additional District Judge, Salem.

2. The appellants / plaintiffs filed a suit for partition and the same was dismissed for default on 19.07.2016. Thereafter, the appellants filed an application for setting aside the order of dismissal for default and to restore the suit. The Trial Court, considering the submissions, allowed the

application on condition that the appellant shall pay cost of Rs.1,000/- to the respondents, on or before 08.12.2016. However, the appellants have not complied with the conditions imposed. The matter was further adjourned to 15.12.2016. Even during that time also, the appellants have not chosen to pay the cost nor taken any steps to get the time extended by the Trial Court. Therefore, for non compliance of the conditions, the Trial Court dismissed the application on 15.12.2016.

3. Eventhough the conduct of the appellants reveal lethargy on their part in not prosecuting the case prudently, in order to give one more opportunity to contest the case on merits rather than shutting the doors on technicalities, the order passed by the Trial Court needs to be set aside. The prejudice caused to the respondents, as decided by the trial Court, can be compensated by imposing costs.

4. Accordingly, this Court by order dated 20.02.2019 set aside the order passed in I.A.No.510 of 2016 in O.S.No.281 of 2015 on the file of the III Additional District Judge, Salem, on the condition that the appellant shall pay a sum of Rs.3,000/- to the learned counsel for the respondent on or before 26.02.2019 and adjourned the matter to 26.02.2019.

5. When the matter is called up today, the learned counsel on either side submitted that the conditional order, dated 20.02.2019, passed by this Court has been complied with.

6. In view of the submissions made, the order passed in I.A.No.510 of 2016 in O.S.No.281 of 2015 pending on the file of the III Additional District Judge, Salem is set aside and this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bkn

To

The III Additional District Judge, Salem.

+1cc to Mr.R.Nalleyappan, Advocate, S.R.No.19014

+1cc to Mr.A.Esakkiappan, Advocate, S.R.No.18996

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CS/22/04/2019