

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.NO.921 OF 2012

1. S.Kavitha
2. Minor Kaviyarasu
3. Minor Kokil
4. Minor Divya

(Appellants 2 to 4 are represented by their mother and natural guardian S.Kavitha)

5. Tmt.Sellammal
6. Tmt.Kasthuri

... Appellants

Vs.

1. Vijaya Bharathi
2. Minor Deepa Priya
Represented by next friend and mother
Vijaya Bharathi
3. S.Dhandapani
4. S.Veera Selvam
5. S.Murugan
6. Perumal Gounder
7. Ramachandran
8. Saravanan
9. Pappathi
10. Kevaran

.. Respondents

Prayer:

Appeal Suit filed under Order 41 Rule 1 read with Section 96 of Code of Civil Procedure against the Judgment and Decree dated 17.02.2010 made in O.S.No.21 of 2004 on the file of Additional District Court, Krishnagiri for prays to set aside the same.

For Appellants : Mr.D.Selvaraju
(change of vakalat given)

O R D E R

This Appeal Suit is directed against the Judgment and Decree dated 17.02.2010 passed in O.S.No.21 of 2004. The suit was instituted for partition and the appellants are some of the defendants in the suit and the suit was decreed in favour of the

plaintiffs. The Appeal Suit was filed by the appellants on 08.07.2010 and till today, notice has not been served to the respondents.

2. It is pertinent to note that none of the respondents are served and when the matter was listed for hearing on 17.12.2019, this Court permitted the appellants to take private notice to the respondents. The learned counsel appearing on behalf of the appellants made a submission that sometime back, the appellants had taken back the case papers along with change of vakalat. However, the learned counsel made an attempt to inform the same to the appellants and inspite of that he could not able to succeed. But the fact remains that the notice has not been served in the Appeal Suit for the past about eight years and more specifically, none of the respondents have been served and the permission granted to take private notice, has also not been complied with.

3. Under these circumstances, this Court has to consider the fact that the suit was contested between the parties and complete adjudication was made in the partition suit. The parties have given evidence, filed documents and the suit was decreed on merits. At the Appeal Suit stage, the appellants are unable to serve notice even to one respondent in the Appeal.

4. Under these circumstances, no purpose would be served in the event of adjourning the Appeal Suit for an unspecific period or keeping the matter pending without service of notice for the past more than nine years. The appellants are not vigilant enough in pursuing the Appeal Suit filed by them during the year 2010 onwards and therefore, this Court is inclined to reject this Appeal Suit. Consequently, A.S.No.921 of 2012 stands dismissed on the ground that none of the respondents has been served notice and the Appeal Suit is pending for the past more than eight years. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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A.S.No.921 of 2012

GP (CO)
CS/17/07/2020