



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 05.02.2021

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

A.S.No.70 of 2015

1. K.Rajamanickam,
S/o.Kaveri Gounder.

2. R.Sulochana,
W/o.Rajamanickam. ... Appellants/Defendants 1 & 2

/versus/

S.Valli,
W/o.Shanmugam, ... Respondent/Plaintiff

Prayer: First Appeal is filed under Section 96 of C.P.C., against the judgment and decree dated 02.07.2009 passed in O.S.No.207 of 2008 on the file of the Additional District Court (Fast Track Court No.1), Salem.

For Appellants : Mr.P.Mani

For Respondent : Ms.J.Preethivi

J U D G M E N T

Heard the Learned Counsel for the Appellants and the Learned Counsel for the respondent.

2. This Appeal is filed by the defendants against whom preliminary decree for partition passed by the Trial Court being an exparte decree, the appeal is filed on short point that the exparte decree passed by the Courts below is not with consonance to law and dictum of this Court.

3. The Learned Counsel for the appellants would submit that, suit for partition was filed by the 1st appellant's sister alleging that, the suit schedule property is the joint family property left by their father Kaveri Gounder. Denying her claim, written statement was filed by the 1st appellant and same was adopted by the 2nd appellant, who is none other than the wife of the 1st appellant in whose favour the 1st appellant has settled the suit property.

4. The written statement was filed on 21.03.2009 but due to some reason, the learned Counsel appearing on behalf of the appellant reported no instruction and therefore, the Trial Court passed an exparte decree, which reads as below: -

"P.W.1 Present. D1 & D2 counsel reports no instruction. D1 & D2 called absent set exparte. Plaintiff already examined Ex.A1 to A4 marked. Claim proved. Suit decreed with cost as prayed for."

5. Following, the exparte judgment passed on 02.07.2009, the Trial Court passed a preliminary decree to divide the suit property by metes and bounds into two equal shares and allotted one share to the plaintiff and another share to the 1st defendant.

6. This said judgment without assigning any specific reason for such decision and without bear minimum facts required for determination assailed by the appellant as void. This Court following the judgment of this Court rendered in M/s.Meenakshisundaram Textiles vs. M/s.Valliammal Textiles Limited reported in 2011 SCC Online Mad 355, vide dated 07.03.2011, set aside the judgment and decree passed by the Trial Court vide order dated 02.07.2009.

7. It is also appropriate to record at this juncture that appellants, who are defendants in the suit after suffering exparte decree, had approached the Trial Court for setting aside the exparte decree against which Civil Miscellaneous Petition was filed and same was also dismissed. Thereafter, Appeal Suit was filed on 21.10.2013 and numbered only in the year 2015. The entire delay in filing the Appeal is to be attributed on the part of the appellants. Meanwhile, they are enjoying the suit property absolutely though prima facie there is evidence and decree is also in favour of the respondent herein. Taking note of this fact, even if the Court directs the appellants herein to co-operate with the trial and complete it within a period of three months, the said condition alone will not be sufficient. Hence, conditional order depositing a sum of Rs.1,00,000/- in the suit account is made as a pre-condition for the appellants herein to pursue the suit on its restoration. Accordingly, the Appeal is Allowed on following conditions:-

(i). The exparte judgment and decree passed by the Trial Court on 02.07.2009 is hereby set aside.

(ii). The Court below, after framing relevant issues, shall complete the Trial within a period of three months from the date of first hearing.

(iii). Before restoring the suit on file, the appellants herein shall deposit a sum of Rs.1,00,000/- in the suit account. The time for deposit the said amount is fixed as on or before 10.03.2021.

7. Accordingly, the Appeal Suit is Allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1.The Additional District Court,
(Fast Track Court No.1),
Salem.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mrt.S.Kaithamalai Kumaran, Advocate Sr.6490

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