

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

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

C.M.A.No.1825 of 2008
and
M.P.No.1 of 2008

1.Pakkiri Ammal
2.Minor Sukumar

..Appellants

Vs.

1.S.Ponnammal
2.Senthil
3.Venkatesan
4.Meenakshi
5.Southern Railway
Rep.by its General Manager,
Park Town, Chennai.
6.Senior Divisonal Personnel Officer,
Southern Railway III Floor,
NGO Annexe, Park Town, Chennai.

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (t) of C.P.C., against the fair and decretal orders dated 11.12.2007 passed in I.A.No.164 of 2006 in A.S.No.68 of 2005 on the file of the Principal Sub Court, Cuddalore.

For Appellants : M/s.R.Meenal

For Respondents : No appearance for R1 to R4
Mr.P.T.Ram Kumar for R5 & R6

J U D G M E N T

The fair and decreetal order dated 11.12.2007 passed in I.A.No.164 of 2006 in A.S.No.68 of 2005 is under challenge in the present Civil Miscellaneous Appeal.

2.The plaintiff is the appellant instituted a suit for declaration to declare the plaintiff as the legally wedded wife of Swaminathan. The suit decreed in favour of the plaintiff and an exparte decree was passed. The defendants filed an Appeal Suit in A.S.No.68 of 2005. The first Appellate Court set aside the judgment and decree passed in O.S.No.399 of 2002 and declined the relief sought for in the plaint. Thus, the plaintiff is constrained to move the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant mainly contended that the appellant had not received any summon / notice in the appeal suit. Thus, the appellant could not able to contest the first appeal filed by the respondents. The first Appellate Court decided the appeal suit without noticing the fact that the summon / notice was not served to the appellant and the judgment was delivered allowing the appeal, more specifically,

by setting aside the judgment and decree passed by the Trial Court.

4. Under these circumstances, the learned counsel for the appellant made a submission that the appellant is entitled for an opportunity to adjudicate the matter on merits. The suit was decreed ex parte. Thus, there was no proper adjudication before the Trial Court even before the first Appellate Court, in view of the fact that summon was not served to the appellant. Thus, in order to redress the grievance of the parties, a complete adjudication is required. It is contended that the appellant is ready and willing to contest the suit on merits and in accordance with law.

5. In the present appeal, notice was issued to the respondents and none appeared. However, substitution of service was effected and paper publication is filed before this Court.

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6. This being the facts and circumstances, the fair and decretal order dated 11.12.2007 passed in I.A.No.164 of 2006 in A.S.No.68 of

2005 is set aside and the first Appellate Court is directed to restore the Appeal Suit and dispose of the same as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. The parties to the appeal suit are directed to co-operate for the early disposal of the appeal suit by not seeking unnecessary and frequent adjournments on flimsy grounds.

7. Accordingly, C.M.A.No.1825 of 2008 stands allowed. No costs. Consequently connected miscellaneous petition is closed.

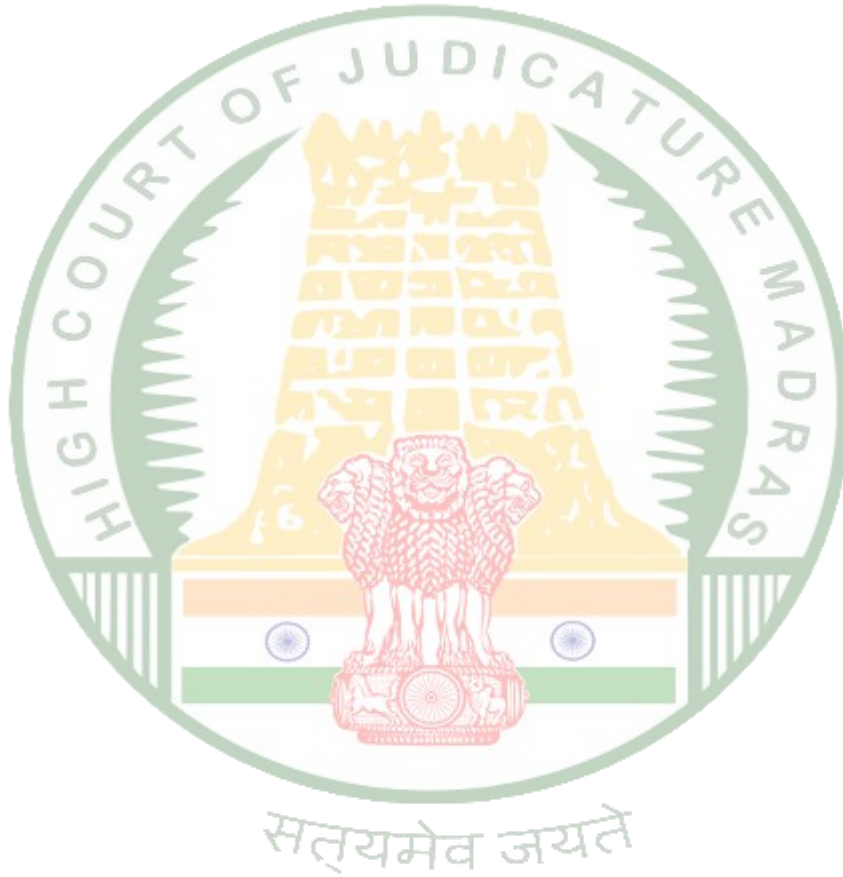
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Index: Yes/No
Internet: Yes/No
Speaking order/Non speaking order

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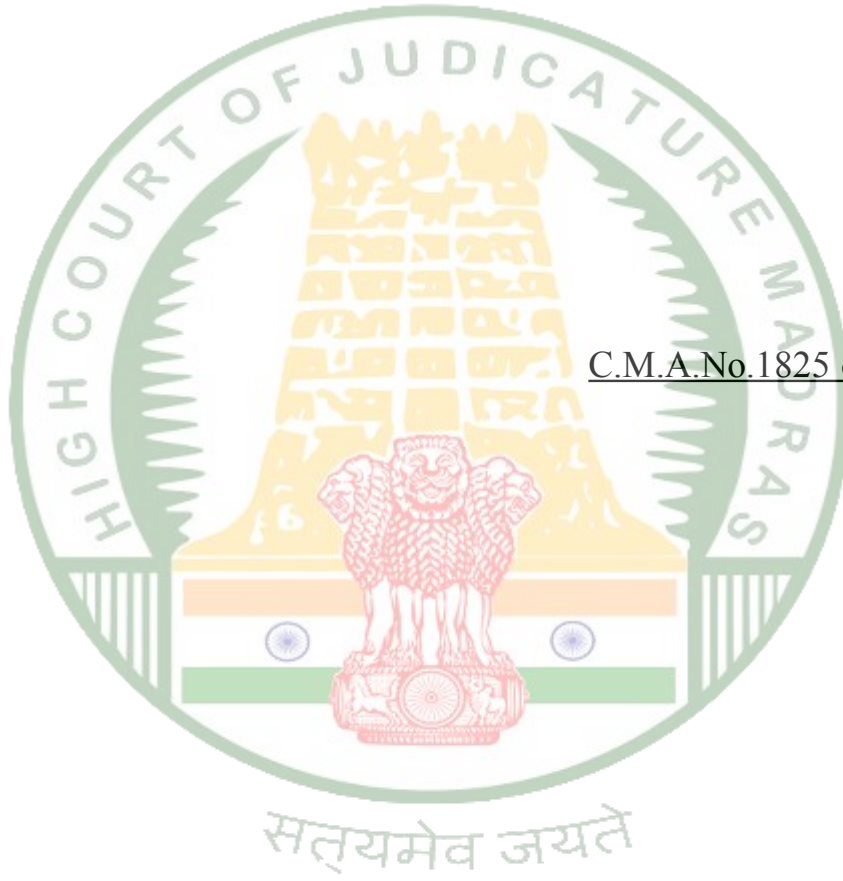
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S.M.SUBRAMANIAM, J.

Pns



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