

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.2547 OF 2016

Kamaludeen Mohammed Farooq Maricar
@ N.M.K.Mohammed Farooq Maricar
Represented by General Power of Attorney
M.Najirudeen, 3B/27, Vathiya Pillai Street,
Portonovo and post, Chidambaram Taluk,
Cuddalore District. ... Appellant/Plaintiff

Vs.

1. N.M.Kamaludin Maracair
2. M/s.I.L and F.S.Tamil Nadu Power Company Ltd.,
Chennai - 600 029, by its Authorized
Signatory, K.Elavarasan, S/o.M.Kaliyaperumal,
Registered Office at No.B4, Navin's Presidium,
103, Nelson Manickam Road,
Aminjikarai, Chennai - 600 029.
3. Infrastructure Leasing and Financial
Services (Private) Limited,
by its Secretary having office at Wescare Tower,
3rd Floor, 16, Centoph Road,
Teynampet, Chennai - 600 018. .. Respondents/Defendants

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1
(C) of C.P.C., against the Fair and Decreetal order passed in
I.A.No.508 of 2015 in O.S.No.137 of 2011 dated 10.08.2016 on the
file of the Court of II Additional District Judge, Chidambaram.

For Appellant : Mr.A.Muthukumar
For Respondents : R1 - No appearance
R2 & R3 - Mr.Arun Prasad

J U D G M E N T

The Fair and Decreetal order dated 10.08.2016 passed in
I.A.No.508 of 2015 in O.S.No.137 of 2011 is under challenge in
the present Civil Miscellaneous Appeal.

2. The plaintiff is the appellant and the suit was instituted for Partition or in alternate, for Declaration and Recovery of possession.

3. The learned counsel appearing on behalf of the appellant made a submission that the appellant/plaintiff is in abroad and the suit was pursued by his power agent. The suit was listed for trial on 06.04.2015 and on that day, the plaintiff was in abroad. The power agent could not able to appear before the Court on account of his illness. The trial Court dismissed the suit for default. The petition for restoration was filed within the time limit. However, the said Interlocutory Application also was dismissed on the ground that the power agent has not filed any medical record to establish his illness.

4. This Court is of the considered opinion that all the suits are to be decided on merits and in accordance with law by affording opportunity to all the parties. Undoubtedly, the parties are bound to appear whenever required. If the intention of the parties is to prolong the litigation, then the Court can draw an inference for the purpose of passing necessary orders. But in the present case, the trial was posted on 06.04.2015 and the plaintiff was in abroad and the power agent, on account of his illness, could not able to appear on that day and it is not established that he plaintiff had an intention to prolong the litigation. This being the factum, the trial Court ought to have granted one more opportunity to decide the case on merits.

5. Accordingly, the Fair and Decreetal order dated 10.08.2016 passed in I.A.No.508 of 2015 in O.S.No.137 of 2011 is set aside and the Civil Miscellaneous Appeal in C.M.A.No.2547 of 2016 is allowed. The suit stands restored. The trial Court is directed to proceed with the suit and dispose of the same as expeditiously as possible preferably within a period of 10 months from the date of receipt of a copy of this judgment. The parties are directed to co-operate for the early disposal of the suit. The parties to the appeal are restrained from seeking unnecessary adjournments. Adjournments are to be granted only on genuine grounds and by recording reasons. Adjournments on flimsy grounds are to be rejected in limine by all Courts. The parties cannot be given privilege of getting adjournments for their benefit in order to prolong and protract the issues. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The II Additional District Judge,
Chidambaram.

+2cc to Mr.A.Muthukumar, Advocate, S.R.No.18878

C.M.A.No.2547 of 2016

SSI (CO)
CS/09/07/2021



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