

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.946 of 2013

and

M.P.No.1 of 2013

1.Kempamma

2.Jayamma

..Appellants/Plaintiffs

Vs.

1.Muniappa

2.Gowramma

3.Santhamma

4.Venkataramanappa

5.Krishnappa

..Respondents/Defendants

Prayer : Civil Miscellaneous Appeal filed under Order XLIII Rule 1 (C) of CPC., to set aside the order dated 21.12.2011 in I.A.No.189/2011 in O.S.No.47 of 2010 on the file of the Principal District Court, Krishnagiri.

For Appellants : Mr.K.Chandrasekaran

For Respondents: R1 & R2 - No appearance

R3 & R5 - Mr.G.Punniyakotti

R4 - Died - Steps due

J U D G M E N T

The Fair and Decreetal order dated 21.12.2011 passed in I.A.No.189/2011 in O.S.No.47 of 2010 is under challenge in the present Civil Miscellaneous Appeal.

2. The plaintiffs are the appellants in the present appeal. The suit was instituted for Partition. The suit was dismissed for default on 04.08.2011 due to the non-appearance of the counsel for the plaintiff on that day. The appellants filed an Interlocutory Application to set aside the exparte dismissal order dated 04.08.2011 and for restitution of the suit. The said Interlocutory Application was dismissed by the trial Court.

3. The findings of the trial Court reveals that the learned counsel for the plaintiff wantonly had not appeared before the Court. Therefore, the suit was dismissed for default and consequently, the application for restoration stands dismissed.

<https://hcservices.ecourts.gov.in/hcservices/> 4. This Court is of the considered opinion that even in

case, the counsels wantonly not appeared in a case without the knowledge of the parties, then the litigants cannot made to suffer on account of the professional negligence committed by the Advocates. The appellants filed the suit for partition. They must be provided with an opportunity to establish their rights in respect of the suit properties. Mere dismissal of the suit on the ground that the counsel not appeared, would defeat the rights of the plaintiffs in this case. Undoubtedly, the learned counsel failed to appear before the Court. If the said allegations are established, appropriate actions would have been taken by the litigants or by the Courts. Contrarily, the trial Court need not reject the Interlocutory Application filed for restoration. In fact, the trial Court ought to have restored the suit and conducted the trial as quick as possible, enabling the parties to establish their rights. In such cases, where the learned counsels wantonly seeking adjournments or remaining absent, the trial Court shall proceed with the case on merits, enabling the parties to appear before the Court directly or by engaging some other counsel. The Trial Court need not reject the Interlocutory Application for restoration of the suit, when the suit was dismissed for default due to the non-appearance of the counsel for the appellant on 04.08.2011.

5. This being the factum, the Fair and Decreetal order dated 21.12.2011 in I.A.No.189/2011 in O.S.No.47 of 2010 is set aside. Consequently, the Civil Miscellaneous Appeal in C.M.A.No.946 of 2013 stands allowed. The trial Court is directed to dispose of the suit as expeditiously as possible and preferably within a period of 10 months from the date of receipt of a copy of this judgment. In view of the fact that the suit was instituted in the year 2010, the parties to the suits are directed to co-operate for the early disposal of the suit.

6. 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. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge, Krishnagiri.

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No. 5945

C.M.A.No.946 of 2013

GSM(CO)
GN(30/03/2021)



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