

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

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

C.M.A.No.2795 of 2016

Dhanabakkiyam

...Appellant/Petitioner/Plaintiff

Vs.

1.M.Karuppaiah

2.Subbaiah

3.Duraisamy

...Respondents/Respondents/Defendants

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the fair and final order dated 29.01.2016 in I.A.No.420 of 2015 in O.S.No.116 of 2013 on the file of the Principal District Judge, Namakkal.

For Appellant : Mr.I.C.Vasudevan
For Respondents : No Appearance

JUDGMENT

The fair and decreetal order dated 29.01.2016 passed in I.A.No.420 of 2015 in O.S.No.116 of 2013 is under challenge in the present Civil Miscellaneous Appeal.

2.The plaintiff is the appellant, who instituted a suit for partition and the suit was dismissed for default. The learned counsel for the appellant made a submission that the application to set aside the order, dismissing the suit for default, was filed within the time limit. The Interlocutory Application in I.A.No.420 of 2015 filed to set aside the dismissal of the suit on default was dismissed by the trial Court. Thus the appellant is constrained to file the present appeal.

3.The reason stated by the trial Court is that the non appearance of the petitioner was deliberate, willful and wanton. Even after giving sufficient time, the plaintiff has not appeared before the Court, and it shows her unwillingness to conduct the trial. Thus the plaintiff is not entitled for the relief and accordingly, the trial Court dismissed the Interlocutory Application.

4.This Court is of the considered opinion that the suit is for partition, and atleast one opportunity should have been given to the party to contest the case on merits. In normal circumstances, all the suits are to be decided on merits. The suit was dismissed for default due to non appearance of the learned counsel who was engaged by the plaintiff. On account of non appearance of the learned counsel for the plaintiff, the plaintiff cannot be made to suffer and atleast an opportunity would have been given to the plaintiff to establish her case by filing documents and by adducing evidences. It is pertinent to note that the Interlocutory Application to set aside the order of dismissal for default was filed within the time limit. Thus, the appellant had shown interest in pursuing the matter and therefore, there is no reason to reject the application to restore the suit. This being the factum, the fair and decreetal order dated 29.01.2016 passed in I.A.No.420 of 2015 in O.S.No.116 of 2013 is set aside and the suit in O.S.No.116 of 2013 stands restored on file. Consequently, the Civil Miscellaneous Appeal stands allowed.

5.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 readily 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(L.A)

//True Copy//

Sub Assistant Registrar

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To

The Principle District Court,
Namakkal.

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BS (CO)
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