

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

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

C.M.A.No.421 of 2016 and
C.M.P.No.3077 of 2016

1.Thangavel

2.Sennayammal

3.Raja

4.Rangammal

5.Ravikumar

6.Sennayammal

..Appellants/Petitioners

Vs.

1.Jothi

2.Sivakumar

3.Muthusamy

4.Rani

5.Madeswaran

6.Manikandan

7.Devi

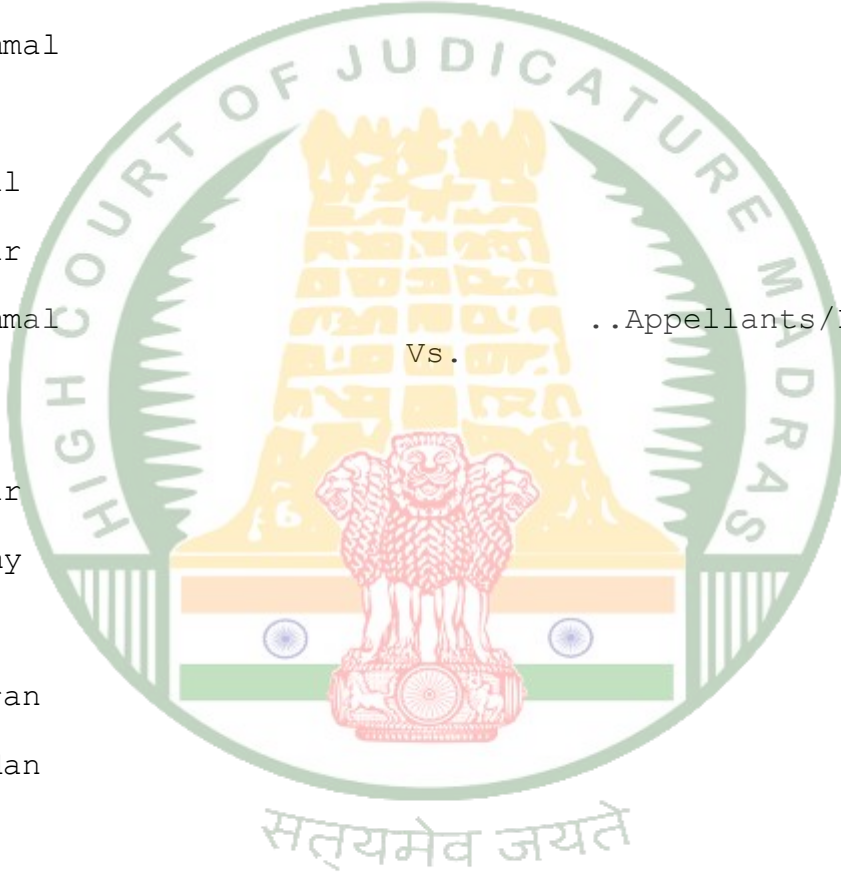
8.Sakthi

9.Ganesan

10.Subramaniam

11.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai-2.

12.Bommayi



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13.Alamelu

14.Chitra

15.Mallika

16.Saritha

..Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Order LXIII Rule 1(c) of C.P.C., against the fair and decreetal order of the learned Principal District Judge, Namakkal dated 08.01.2016 made in I.A.No.189 of 2015 in O.S.No.129/2012.

For Appellants : Mr.I.Abrar MD Abdullah
For Respondents : Mr.T.Dhanyakumar

J U D G M E N T

The fair and decreetal order dated 08.01.2016 made in I.A.No.189 of 2015 in O.S.No.129 of 2012, 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. Admittedly, the suit was dismissed for default due to non appearance on behalf of the plaintiffs. An interlocutory application was filed in I.A.No.189 of 2015 to restore the suit under Order IX Rule 9. The Interlocutory application was dismissed by the trial Court mainly on the ground that the plaintiffs even on earlier occasions, have not pursued the suit vigilantly and repeatedly absent in appearing in the case. The Trial Court made a finding that on several occasions, the plaintiffs or the learned counsel not appeared to contest the case. Thus, the motive of the plaintiffs is to prolong the litigation.

3. Undoubtedly, there was a delay at the instance of the plaintiffs in disposing of the main suit. However, the interlocutory application was filed soon after the suit was dismissed for default. The suit is for partition and the rights of the parties are to be crystallized with a view to give one more opportunity to the appellants / plaintiffs.

4. Thus, this Court is inclined to restore the suit despite the fact that the plaintiffs did not appear before the Trial Court for hearing on earlier occasions. Hereafter, the appellants are expected to lead the case properly and adjudicate the issues by availing the opportunity provided by the Trial Court.

5. Accordingly, the fair and decreetal order dated 08.01.2016 made in I.A.No.189 of 2015 in O.S.No.129 of 2012, is set aside. C.M.A.No.421 of 2016 stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

6. The Trial Court is directed to dispose of the suit as expeditiously as possible, preferably within a period of ten months from the date of receipt of a copy of this order. The parties to the suit are directed to cooperate for the earlier disposal of the suit. The Trial Court should decline unnecessary adjournments on flimsy grounds if sought for by the parties to the suit. The adjournments sought are to be granted only on genuine grounds and by recording reasons. Thus, the Trial Court is expected to proceed with the case without granting any unnecessary adjournments either at the instance of the parties or by the Courts.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsk

To

1.The Principal District Judge, Namakkal

2.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai-2.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.T.Dhanyakumar, Advocate sr 3680.

C.M.A.No.421 of 2016and
C.M.P.No.3077 of 2016

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SP(02/03/2021)