

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

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

C.M.A.NO.2044 OF 2014

AND

M.P NO.1 OF 2014

Shaik Mohideen

.. Appellant

Vs.

1.Jaibunnisa
2.Thoulath Nisha
3.Kudubiya Begum
4.Selvarani
5.M.Duraisamy

... Respondents

Prayer :

Civil Miscellaneous Appeal filed under Order 43 Rule 1(d) of CPC, to set aside the fair and decreetal order dated 23.01.2014 made in I.A No.78 of 2020 in O.S No.18 of 2010, on the file of the Principal District Court, Tiruvarur.

For Appellant : Mrs.Aishwarya S.Nathan
For M/s.Srinath Sridevan

For Respondents : Mr.N.Manokaran for R1 & R2
No Appearance for R3 & R4
R5 - Not ready in notice

J U D G M E N T

The fair and decreetal order dated 23.01.2014 passed in I.A. No.78 of 2012 in O.S No.18 of 2010 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellant is the first defendant in the suit. The suit is filed for partition and separate possession.

3. The learned counsel for the appellant mainly contended that the appellant filed his written statement and ready to participate in the process of trial. Due to unavoidable

reasons, he could not able to appear on a particular day and he was set exparte. The application under Order 9 Rule 13 CPC has been filed to set aside the exparte order within a time limit. The trial Court dismissed the application and thus, the present appeal is filed.

4. The learned counsel for the respondents objected the said contention by stating that the suit is for partition and if the appellant participate in the suit, decree is to be passed as rights of the parties are clearly settled by the trial Court. This apart, it is a mistake committed by the appellant by not appearing before the Court when the matter was listed for trial. Therefore, the appeal is to be dismissed.

5. This Court is of the considered opinion that it is not as if the appellant had not inclined to contest the suit, infact, the appellant filed the written statement in the suit and prepared himself to contest the matter. This being the factum, at least an opportunity is to be provided to the appellant to defend his case in the manner known to law.

6. The trial Court instead of providing an opportunity, dismissed the application filed under Order 9 Rule 13 of CPC to set aside the exparte decree. All the suits are to be decided on merits by affording opportunities to the parties concerned. Undoubtedly, if any litigant intentionally avoided the court proceedings or may attempt to prolong or protract the matter, then the Courts may reject such application. In all other circumstances, the parties are provided to get an opportunity to defend the case in the manner known to law, even if the principles are to be followed already.

7. This Court is of the considered opinion that the defendant filed written statement and due to mistake on the part of the counsel by not appearing on a particular day, the appellant was set exparte. Mistake of the counsel should not affect the legal right of the defendant. Under those circumstances, this Court is inclined to allow this appeal.

8. Accordingly, the fair and decreetal order dated 23.01.2014 passed in I.A No.78 of 2012 in O.S.No.18 fof 2010 is set aside and the present Civil Miscellaneous No.2044 of 2014 stands allowed. In view of the fact that the suit is of the year 2010, the trial Court is directed to dispose of the suit as expeditiously as possible and preferably within a period of four months from the date of receipt of a copy of this judgment.

9.The parties are directed to co-operate for the earlier disposal of the suit. The parties are restrained from seeking unnecessary adjournments. Even in case, adjournments are to be

granted on genuine grounds, the Court should record the reasons. The adjournments on flimsy grounds are liable to be rejected in limini. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

uma

To

The Principal District Judge,
Tiruvarur.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/s.Srinath Sridevan, Advocate, S.R.No.1530

+1cc to Mr.N.Manokaran, Advocate, S.R.No.1552

C.M.A.No.2044 of 2014
M.P.No.1 of 2014

MG (CO)
CS/12/03/2021



सत्यमेव जयते

WEB COPY