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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 07.01.2021

JUDGMENT DELIVERED ON: 20.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NO.738 OF 2014

AND

M.P.NO.1 OF 2014

1. S.Sagunthala
W/o.Chandrasekar

2. Devammal
W/o.Sasi Kumar

.. Appellants/Plaintiffs

Vs.

1. R.Gangadharan
S/o.Raju (Bommannan)

2. Krishnaveni
W/o.Late.Basavaraj

3. Rajendran
S/o.Karuppannaswamy

4. Santhosh
S/o.Sivaraj

5. Dinesh Kumar
S/o.Sivaraj

6. M.Nagarajan(Rajan)
C/o.Mathaiah

.. Respondents/Defendants

PRAYER :

Civil Miscellaneous Appeal is filed under 43 Rule 1 of the Civil Procedure Code, to set aside the judgment and decree dated 22.11.2013 made in A.S.No.18 of 2013 on the file of the Subordinate Judge and Appellate authority of the Nilgiris at Uthagamandalam, in reversing and remanding the judgment and decree dated 08.08.2011 made in O.S.No.57 of 2006 on the file of the District Munsiff Court, Uthagamandalam.



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For Appellants : Mr.V.Rajesh

For Respondents

For R1 : Mr.R.Subramanian

For R2 - R6 : Ex-parte

J U D G M E N T

The appellants herein are the plaintiffs in the suit, who filed a suit for partition against their mother and their brother's wife, the second defendant and other defendants 3 to 7 who are strangers before the trial Court. Though some of the defendants filed written statement, the defendants 2 to 6 were called absent and set ex-parte. Based upon the evidence of second plaintiff as P.W.1 and another contesting defendant D3 who was examined as D.W.1. the trial Court granted a preliminary decree for partition in favour of the plaintiffs.

2. Aggrieved by the same, the fourth defendant who is the purchaser of the property from the second defendant preferred the First Appeal in A.S.No.18 of 2013, before the first appellate Court / the Subordinate Judge and Appellate Authority of the Nilgiris at Uthagamandalam.

3. Before the first Appellate Court, the respondents 1 and 2 therein / plaintiffs and the fifth respondent alone contested and other respondents 4,6,7 & 8 therein remained ex-parte, the third respondent therein was reported dead. Based upon the submission made by the fourth defendant, the first appellate Court concluded that the suit is fit for fresh trial, since, the fourth defendant who is the purchaser of the property from the second defendant is having valid claim with regard to his right over the suit property(ies).

4. Accordingly, the First Appeal was allowed suit was remitted back to the trial Court for disposal by giving opportunity to the fourth defendant to put forth his case by filing written statement and producing necessary documents. Aggrieved by the same, the Appellants / plaintiffs have come forward with this present Civil Miscellaneous Appeal.

5. The learned counsel for the appellants submitted that the lower Appellate court erroneously remitted back the suit without considering the fact that the first respondent / 4th defendant remained ex-parte, inspite of the opportunity given to him. So, they prayed to set aside the order passed by the first appellate Court in A.S.No.18 of 2013.



6. By way of reply, the learned counsel for the first respondent/ fourth defendant submitted that the fourth defendant purchased the property(ies) from the second defendant who remained ex-parte before the trial Court. In order to prove his claim over the property, he was granted opportunity to defend his case before the trial Court. According to the first respondent / 4th defendant, he purchased the property from the second defendant who remained ex-parte before the trial Court. But as per the verdict of the trial Court, preliminary decree was granted in favour of the plaintiffs, based upon the evidence of P.W.1.

7. On a perusal of the records, it clearly reveals that most of the defendants remained ex-parte and the trial Court also without going into the entire documents in a detailed manner, granted a preliminary decree without any appreciation of the evidence. In a case for partition, the rights between the parties is to be adjudicated by giving opportunity to the parties to the suit, otherwise, multiplicity of proceedings would arise between the parties. Therefore, in order to give a fair opportunity to the the first respondent/4th defendant, who is the purchaser of the property(ies) from the second defendant, the first appellate Court remanded the suit for fresh disposal. The findings of the first appellate Court are reasonable. Hence, the present appeal filed by the appellants is unsustainable.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed, and the order of the first appellate Court is confirmed, thereby the trial Court is directed to give fair opportunity to the first respondent/fourth defendant by adducing fresh evidence with documents and the plaintiffs are also entitled to cross-examine the first respondent/fourth defendant and the trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this judgment. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Judge and
Appellate Authority of Nilgiris,
Udagamandalam.



2. The District Munsif,
District Munsif's Court,
Udagamandalam.

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

+lcc to Mr.D.Lakshmipathy, Advocate, S.R.No.3727
+lcc to Mr.R.Subramanian, Advocate, S.R.No.3006

C.M.A.No.738 of 2014
and M.P.No.1 of 2014

VGI (CO)
CS/31/08/2021