

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.110 OF 2017

1. Shanmugasundaram
2. Thulasimani

... Appellants

Vs.

1. Thulasimani @ Nataraj
2. Perundurai Sri Chellandiamman Kottai Mariamman,
Rep. by its Assistant Commissioner,
HR & CE Department, Erode.
3. Arulmigu Sellandiamman Kottai Mariamman Temple,
Perundhurai, Rep.by its Executive Officer.
4. Pappathi @ Rukmani
5. P.Renuka
6. P.Amudha
7. Chellammal
8. Palaniammal

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the fair and final order dated 10.08.2016 passed in I.A.No.247 of 2013 in O.S.No.22 of 2004 on the file of II Additional District Court, Erode.

For Appellants	:	Mr.S.Kaithamalai Kumaran
For R1, R4 to R6	:	Mr.V.S.Kesavan
For R2	:	No Appearance
For R3	:	Mr.V.Balasubramanian
For R7	:	Mr.C.Munusamy
For R8	:	Insufficient Address

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JUDGMENT

The plaintiffs are the appellants in the present appeal. The suit was instituted for partition and the suit was dismissed for default. The appellants filed an Interlocutory Application under Order 9 Rule 9 of the Code of Civil Procedure to restore the suit, which was dismissed for default on 10.08.2016. The appellants have stated in the affidavit filed in support of the Interlocutory Application that the case was posted for enquiry

on 23.09.2009. The advocates were on strike and the appellants were not able to get instructions from the counsel and the learned counsel was also not in a position to appear before the Court on account of the strike. In view of the fact there was no representation, the suit was dismissed for default.

2.This Court is of the considered opinion that because of the non appearance of the learned counsel for the appellants on account of Advocates' boycott, the parties should not be made to suffer and opportunity is to be provided to the plaintiffs to contest the case on merits by filing documents and by adducing evidences. Contrarily, the suit cannot be rejected on the ground of default, in view of the fact that in the present case there was Advocates' boycott during the relevant point of time.

3.This being the factum established, this Court is inclined to consider the grounds raised in the present Civil Miscellaneous Appeal and accordingly, the fair and decreetal order passed in I.A.No.247 of 2013 in O.S.No.22 of 2004, dated 10.08.2016 is set aside. The suit in O.S.No.22 of 2004 stands restored. Consequently, the Civil Miscellaneous Appeal 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 order.

4.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(CO)

//True Copy//

Sub Assistant Registrar

vv2

To

The II Additional District Court, Erode.

+lcc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.1265

C.M.A.No.110 of 2017

BS (CO)

CS/15/03/2021