



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2357 of 2018
and CMP No.17958 of 2018
and CRP(PD) No.3869 of 2018 and CMP No.21554 of 2018

1. Pappayee
2. Selvaraj
3. Ramamoorthy ..Appellants/Plaintiffs in both the CMA & CRP

Vs

1. Sellammal
2. Rani
3. Rohumadhi
4. Saravanan
5. Nallammal
6. Shanthi
7. Nallammal
8. Selvamani
9. Venkatachalam
10. Sathish Kumar
11. Premnath ..Respondents/Defendants in both the CMA & CRP

Prayer:

CMA No.2357 of 2018:

The Civil Miscellaneous Appeal filed under Order XLIII Rule I (C) of Civil Procedure Code against the fair and decreetal order passed in I.A.No. 2/2018 in O.S.No. 139/2013 on the file of the Sessions (Fast Track Mahila) Judge, Namakkal dated 13.07.2018.

C.R.P.(PD)No.3869 of 2018:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order of the Sessions (Fast Track Mahila) Judge, Namakkal passed in I.A.No.166 of 2017 in O.S.No.139 of 2013 dated 10.10.2017.



WEB COPY

For Appellants in : Mr. V.K. Vijayaraghavan
CMA & Petitioners in CRP

For R1, R3, R4 in CMA : Mr. T.Dhanyakumar
& CRP

For R2, R5 to R11 in : Served, No Appearance
CMA No.2357/2018

RR 9 to 11 MCRP 3869/18 : Mr.S.Senthil - NA
Served

R.2,R.7,R.9,R.10 & R.11
in CRP No.3869 of 2018 : No appearance

R.5 & R.8 in CRP No.
3869 of 2018 : Left

COMMON JUDGMENT

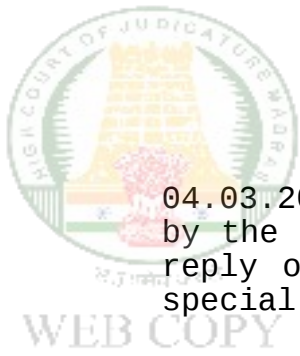
C.R.P. No. 3869 of 2018 has been filed by the petitioners challenging the dismissal of their application on 10.10.2017 by the Sessions (Fast Track Mahila) Court, Namakkal, in I.A.No. 166 of 2017 in O.S.No. 139 of 2013, filed under the Order 8 Rule 9 of Civil Procedure Code, seeking leave of the Court to file the reply statement.

C.M.A. No. 2357 of 2018 has been filed by the very same petitioners, challenging the order dated 13.07.2018 passed by the very same Court, dismissing the application filed in I.A.No. 2 of 2018 in O.S.No. 139 of 2013 to restore the suit in O.S.No. 139 of 2013 which was dismissed for default on 10.11.2017.

2. Since, the Civil Revision Petition as well as the Civil Miscellaneous Appeal arise out of the very same suit (O.S.No.139 of 2013), both the matters are disposed of by a common judgment.

3. The appellants/petitioners are plaintiffs in O.S.No. 139 of 2013, pending on the file of Sessions (Fast Track Mahila) Court, Namakkal and the respondents in the appeal as well as the civil revision petition are the defendants in the said suit. The suit was filed for partition. The plaintiffs and the defendants are the family members. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

4. The plaintiffs filed a petition in I.A.No. 166 of 2017 in O.S.No. 139 of 2013 under Order 8 Rule 9 of Civil Procedure Code, seeking leave of the Court to file their reply statement. The said application came to be dismissed by the trial Court on 10.10.2017 on the following grounds:-



a) The written statement was filed by the defendants on 04.03.2015. But, the petition in I.A.No. 166 of 2017 was filed by the plaintiffs, seeking the leave of the Court to file their reply only on 17.02.2017. The suit was listed for trial in the special list.

b) The Trial Court has observed that ample time was available for the plaintiffs to file the reply statement and since the same was not filed, despite the plaintiffs having sufficient time, the petition filed by the plaintiffs, seeking leave of the Court to file the reply statement, cannot be accepted at the stage when the suit is posted for trial in the special list. Since, the petition was filed belatedly, the trial Court had dismissed the application.

5. Admittedly, issues have been framed by the trial Court based on the pleadings filed by the respective parties and the suit was ripe for trial when I.A.No. 166 of 2017 was filed by the plaintiffs under Order 8 Rule 9 of the Civil Procedure Code, seeking the leave of the Court to file the reply statement. The written statement was filed as early as on 04.03.2015, but, admittedly I.A.No. 166 of 2017 was filed under Order 8 Rule 9 of Civil Procedure Code only on 17.02.2017, when the suit was posted for trial in the special list. This Court does not find any infirmity in the reasons given by the trial Court for dismissal of I.A.No. 166 of 2017 on 10.10.2017 which has been impugned in the Civil Revision Petition No. 3869 of 2018.

6. Therefore, this Court is of the considered view that in so far as C.R.P.No. 3869 of 2018 is concerned, there is no merit and accordingly C.R.P. No.3869 of 2018 is dismissed.

7. However, in so far as C.M.A. No. 2357 of 2018 is concerned, the said appeal arises out of an order dated 13.07.2018 in I.A.No. 2 of 2018 passed by the very same Court in the very same suit (O.S.No.139 of 2013).

8. I.A.No. 2 of 2018 in O.S.No. 139 of 2013 was filed by the plaintiffs to restore the very same suit which was dismissed for default on 10.11.2017. The trial Court has dismissed the said application on the following grounds:-

a) The suit was filed on 22.07.2013 and later the suit was posted for trial in the special list on 01.02.2017.

b) After the suit was posted for trial in the special list, the plaintiffs filed a petition on 13.12.2017 under Order 8 Rule 9 of the Civil Procedure Code, seeking leave of the Court to file the reply statement.



WEB COPY

c) The application in I.A.No. 166 of 2017, filed under Order 8 Rule 9 of Civil Procedure Code was dismissed on 10.10.2017.

d) In spite of the dismissal of the aforesaid application, the plaintiffs side was not ready for the trial and the matter was adjourned to 10.11.2017 for commencement of trial.

e) On 10.11.2017 also the plaintiffs were not ready to commence the trial and instead they filed a petition in I.A.No. 366 of 2017 for removal of the suit from the special list.

f) The plaintiffs filed the petition in I.A.No.366 of 2017 only on 10.11.2017 i.e., after 9 months of the suit being posted for trial in the special list on 01.02.2017.

g) The plaintiffs filed the petition by stating that they are taking steps for filing revision against the order passed in I.A.No. 166 of 2017 and they are willing to abide by any condition that may be imposed by the Court for granting adjournment.

9. After recording the aforementioned facts, the trial Court by order dated 13.07.2018 dismissed the application filed by the plaintiffs in I.A.No. 2 of 2018 to restore the suit, which was dismissed for default, on 10.11.2017.

10. Even though, the reasons given by the trial Court for dismissing this application filed to restore the suit, which was dismissed for default on 10.11.2017, may be correct, this Court, however, is inclined to allow this appeal on the sole ground that the suit has been filed for partition and the plaintiffs and the defendants are family members. But, however, the plaintiffs have to necessarily abide by the conditions, to be imposed by this Court.

11. For the foregoing reasons, the Civil Miscellaneous Appeal is allowed and the order dated 13.07.2018 passed in I.A.No. 2 of 2018 in O.S.No. 139 of 2013 by the Sessions (Fast Track Mahila) Court, Namakkal is hereby set aside. However, it is made clear that the appellants/plaintiffs are directed not to take any further adjournment to enable the Trial Court to complete the trial expeditiously. The trial Court is entitled to impose cost if any unnecessary adjournment is sought for by the plaintiffs.



12. Since the suit is of the year 2013, the trial Court is directed to dispose of the suit in O.S.No. 139 of 2013 within four months from the date of receipt of a copy of this order.

13. In the result,
C.R.P.(PD)No.3869 of 2018 is dismissed.
C.M.A.No.2357 of 2018 is allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar

sr/rgi

To

1.The Sessions (Fast Track Mahila) Court, Namakkal.

Copy to

The Section Officer, V.R.Section, High Court, Madras

+1CC to Mr.V.K.Vijayaragavan, Advocate, SR.No. 47159

+1CC to M/s.T.Dhanyakumar, Advocate, SR.No. 47675

+1CC to M/s.S.Senthil, Advocate, SR.No. 47785

C.M.A.No. 2357 of 2018
& CRP (PD) No.3869 of 2018

AJS(CO)

B.VC (06/10/2021)