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C.M.A.No.492 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.492 of 2020

1.Sellamuthu

2. Pongaiammal

.. Appellants

Versus

1.Nirmala

2.Keerthana

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43, Rule 1(d) r/w Regular Appeal under Section 96 of C.P.C. against the Fair and Decretal Order dated 24.10.2019 passed in I.A.No.3 of 2019 in O.S.No.1 of 2008 on the file of Sessions (Fast Track Mahila) Judge, Namakkal.

For Appellants : M/s.P.Veena Suresh

For Respondents : No appearance

JUDGMENT

The Appeal has been filed against the Fair and Decretal Order dated 24.10.2019 passed in I.A.No.3 of 2019 in O.S.No.1 of 2008 on the file of Sessions (Fast Track Mahila) Judge, Namakkal.

2. Notice served to the respondents through paper publications. Name printed in the cause lists, none appeared on behalf of the respondents.

3. The necessary facts for determination of this appeal is whether the non



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appearance of the appellants/defendants has justifiable reasons. Initially, the suit was filed by the Respondents 1 and 2 for partition. The plaintiffs/respondents 1 and 2 are the wife and daughter of one Mr.Chandrasekaran, who is the son of the appellants/defendants. The appellants herein are the defendants 1 and 2.

4. On the first round, the suit was dismissed for default and the I.A. was also dismissed. On appeal, the High Court has set aside the Order and remitted back to the Trial Court to dispose of the main suit within a time limit. Subsequently, the first appellant underwent knee surgery and could not appear, resulting in passing of the exparte decree which is impugned herein which I find in time. After going through the averments in the petition and also taking note of other issues in the written statement, I find that an opportunity has to be given to the appellants as it results to property dispute.

5. In the interest of justice, this Civil Miscellaneous Appeal is ordered and the I.A.No.3 of 2019 in O.S.No.1 of 2008 is set aside. The O.S.No.1 of 2008 is ordered to be taken on file preferably within a period of three weeks



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from the date of receipt of a copy of this Order.

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6. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

09.01.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

dhk

To

The Presiding Officer,
Sessions (Fast Track Mahila) Court
Namakkal



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RMT.TEEKAA RAMAN.J,

dhk

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