



C.M.A.No.365 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.365 of 2019

and

C.M.P.No.1306 of 2019

1. B.K.Manimekalai
2. P.Kothandaraman

... Appellants

Vs.

1. Rajeswari (alias) Easwari
2. S.N.Mani Chandar (alias) Mani Chandran
3. Banumathi
4. N.Shakunthala
5. N.Cathalin Jeyamani
6. R.Rajeswari
7. B.Shantha
8. T.Kalaimani
9. P.Dharathi Suganthi
10. C.Sukumar
11. K.Rajagopal

... Respondents

12.

Prayer: Civil Miscellaneous Appeal filed under order 43 Rule 1 (d) of the Code of Civil Procedure, 1908 against the fair and decretal order dated 16.08.2018 in I.A.No.130 of 2017 in O.S.No.198 of 2014 on the file of the III Additional District Judge, Thiruvallur at Poonamallee.



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For Appellants : Mr.C.Harini

For Respondents : Mr.A.Saravanan for R1

No Appearance for R2
to R7

Died [R8, 10 and 11]

JUDGEMENT

The Civil Miscellaneous Appeal filed against the fair and decreetal order dated 16.08.2018 in I.A.No.130 of 2017 in O.S.No.198 of 2014 on the file of the III Additional District Judge, Thiruvallur at Poonamallee.

2. Though the notice was served on the respondents 2 to 7 and 9, no one appeared on behalf of them, however considering the pendency of the period of the appeal, this Court is inclined to dispose of the same based on the materials available on record.

3. It is the case of the appellant that as against the *ex-parte* preliminary decree passed in O.S.No.198 of 2014 against the appellants / defendants 9 and 10 therein, the appellants have filed an application in



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I.A.No.130 of 2017 seeking to set aside the *ex-parte* decree passed against them on the ground that the appellants were not served with any summons in the above said suit, which application was dismissed vide order dated 16.09.2018 holding that the appellants have not taken any steps to prosecute the suit which resulted the case to be set *ex-parte*. Challenging the same, the present appeal has been filed.

4. The learned counsel appearing for the appellant submits that though the suit property have been sold in favour of the appellants vide sale and settlement deeds dated 26.04.1990, 30.10.1996 and 26.04.1990 respectively, however, the first respondent / plaintiff had filed a suit for partition claiming half share in the suit properties challenging the alienations made by her brother, the second respondent / first respondent after a lapse of 24 years which is barred by limitation. However, without providing any opportunity to the appellants, the trial court has passed an *ex-parte* decree which is wholly unsustainable.

5. He further submits that when the said suit was challenged by the appellants by way of an interlocutory application, the same was



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dismissed on the ground that the appellants have not taken any steps to prosecute the suit which resulted the case to be set ex-parte. Though no summons were duly served upon the appellants, the trial court has dismissed the application filed by them which is wholly unsustainable.

6. The learned counsel appearing for the first respondent / plaintiff submits that though the suit was filed in the year 2013, however, the summons sent to the appellants had returned with an endorsement 'refused' and therefore there is a due service. Upon considering the said facts, the trial court rejected the application filed by the appellants seeking to set aside the order passed in O.S.No.198 of 2014, which cannot be interfered with. Accordingly, he prayed to allow the appeal.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials placed on record.

8. Admittedly, an ex-parte decree has been passed by the trial court and when the said suit was challenged by the appellants by way of an



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interlocutory application, the same was also dismissed on the ground that the appellants have not taken diligent steps to prosecute the suit and have left the case to be set ex-parte. Though the facts stand as above, however, it is the claim of the appellants that they were not given opportunity to prosecute the said case. When an order has come to be passed without giving any opportunity to the parties, it clearly shows that the said order has been passed violating the principles of natural justice. In that view of the matter, the preliminary decree dated 16.08.2018 passed in I.A.No.130 of 2017 in O.S.No.198 of 2014 on the file of III Additional District Court, Tiruvallur, Poonamallee is set aside and the suit is reverted to the trial court for fresh disposal of the original suit.

9. However, the trial court is directed to dispose of the suit within a period of six (6) months from the date of receipt of a copy of this order after affording an opportunity of hearing to both the parties especially the appellants. However, liberty is granted to the appellants as well as the respondents to canvass all their grievances before the trial court in accordance with law. Registry is directed to return the documents to the appellants enabling them to workout their remedy in the manner known



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to law. In view of the above judgement, this Court is of the view that no order is necessary in the civil miscellaneous petition in C.M.P.No.28136 of 2023 seeking to receive the documents filed along with the petition as additional exhibits on the side of the appellants. Accordingly the C.M.P.No.28136 of 2023 is closed.

10. This Civil Miscellaneous Appeal is allowed with the above terms. No costs. Consequently, connected miscellaneous petition is also closed.

13.12.2023

Note:

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No



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- 1.III Additional District Judge, Thiruvallur at Poonamallee.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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