



WEB COPY



CMA.No.2863 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2863 of 2023

1.Rajendran

2.Periasamy

3.Paramasivam

... Appellants

VS.

1.Chandra

2.Rajathi

3.Chitra

4.Pappa

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of the Code of Civil Procedure, 1908 against the decree and judgment dated 18.08.2023 in I.A.No.04 of 2022 in O.S.No.316 of 2020 on the file of the I Additional District and Sessions Judge, Salem

For Appellants : Mr.A.Yogaraj

For Respondents : Mr.P.Jagadeesan



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J U D G M E N T

The appellants are the defendants in O.S.No.316 of 2020 on the file of the I Additional District and Sessions Court, Salem. The suit was filed for partition of the suit properties by the respondents herein. Since the petitioners / defendants did not file their written statement even though sufficient opportunities were given to them, the trial court set them *ex parte* on 12.11.2021 and an *ex parte* decree was passed on 12.04.2022. The appellants / defendants thereafter filed a petition under Order IX Rule 13 C.P.C. to set aside the *ex parte* decree passed in O.S.No.316/2020.

2.The learned trial court judge after hearing both the parties dismissed the said petition on the ground that though sufficient opportunities were given to the defendants they did not file their written statement. Aggrieved over the orders passed by the trial court judge, the present appeal is filed by the defendants.

3.Heard Mr.A.Yogaraj, learned counsel for the appellants and Mr.P.Jagadeesan, learned counsel for the respondents.



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4.The suit in O.S.No.316/2020 was filed by the respondents for partition of the suit properties. The parties are brothers and sisters. It is true that the defendants in the suit (appellants herein) did not file their written statement though sufficient opportunities were given to them. However, it is seen from the records that along with the petition under Order IX Rule 13 C.P.C the defendants filed their written statement. Any civil suit should be decided on merits. In these circumstances, the *ex parte* decree and judgment passed by the trial court in O.S.No.316/2020 is set aside. The trial court is directed to take the case in O.S.No.316/2020 on file and dispose of the same as expeditiously as possible.

In the result, the Civil Miscellaneous Appeal is allowed. No costs.

09.08.2024

Index : Yes/No
Speaking/Non-speaking order
mtl



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R.HEMALATHA, J.
mtl

To

1. The I Additional District and Sessions Judge, Salem.
2. The Section Officer, VR Section, Madras High Court, Chennai.

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