



C.M.A(MD)No.910 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 19.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.910 of 2023

and

C.M.P(MD)Nos. 12947 & 13262 of 2023

Anthonisamy

... Appellant

Vs.

Selvaraj (Died)

1.Anthoniyammal

2. Ganapathy

3. Chandrabose

4. Arockiyapaulraj

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under section 104 read with Order XLIII Rule 1 of Civil Procedure Code, to set aside the Order, dated 22.06.2023 in I.A.No.02 of 2023 in I.A.No.40 of 2022 in A.S.No.101 of 2018 passed by the Learned II Additional District and Sessions Judge, Thanjavur and allow the Civil Miscellaneous Appeal.

For Appellant : M/s.A.Senthilkumar

For Respondents : No appearance



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JUDGEMENT

This Civil Miscellaneous Appeal is filed to set aside the Order, dated 22.06.2023 in I.A.No.02 of 2023 in I.A.No.40 of 2022 in A.S.No.101 of 2018 on the file of the II Additional District and Sessions Court, Thanjavur.

2. The Plaintiff is the Appellant and the Defendants are the Respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants.

3. The plaintiff has filed a suit in O.S.No.3 of 2010 for partition of suit properties consisting of only two items. The said suit was allowed as far as 1st item is concerned but the suit was dismissed as far as the 2nd item. Aggrieved over the plaintiff had preferred appeal suit in A.S.No.101 of 2018, wherein notice was order by the Appellate Court. The plaintiff failed to pay batta and the appeal was dismissed for default on 22.10.2019. Hence, the plaintiff has filed an interlocutory application in I.A.No.40 of 2022 and the same was dismissed for default on 20.12.2022.



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Again, the plaintiff filed another interlocutory application in I.A.No.2 of 2023 to restore the said I.A.No.40 of 2022 and the same was also dismissed on 22.06.2023. Aggrieved over the same, this Civil Miscellaneous Appeal is preferred.

4. The contention of the plaintiff is that the suit was dismissed for non-payment of Batta. Since the plaintiff was seriously ill due to Jaundice, he could not take steps to file the same in time. There was delay of 285 days.

5. It is seen that the suit was filed for partition and therefore, the rights of the parties cannot be curtailed. Hence, this Court is inclined to allow this Civil Miscellaneous Appeal, however on cost.

6. Accordingly, this Civil Miscellaneous Appeal is allowed. The Appellant is directed to pay a sum of Rs.3,000/- to the following organization which is meant for disabled children.



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“SAKSHAM”

Swami Sivanandha Sevarshram,
Austin Patti Road, Thopur, Madurai
Contact Person Sri Govindharaj
Mobile Number: 63740 48342.

No Costs. Consequently, connected miscellaneous petitions are closed.

19.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

KSA



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To

1. The II Additional District and Sessions Court,
Thanjavur.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Order made in
C.M.A(MD)No.910 of 2023**

19.03.2024