



WEB COPY

CMA No. 1306 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-06-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

CMA No. 1306 of 2025

AND

CMP NO. 11046 OF 2025

1. Lakshmi
2. Bharath
3. Rajmohan

Appellant(s)

Vs

1. Ganesan
2. Baskaran

Respondents

PRAYER :- Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of Civil Procedure Code, praying to set aside the docket order dated 10-01-2025 passed by the Learned Judge(Addl./District and Sessions Court (FTC), Arani, Tiruvannamalai District in IA.No.5/2024 in OS.No.66/2022 and consequently set aside the exparte decree in OS.No.66/2022 dated 27-02-2024.



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For Appellants: Mr.R.Ananth For
Mr.T.N. Rajagopalan

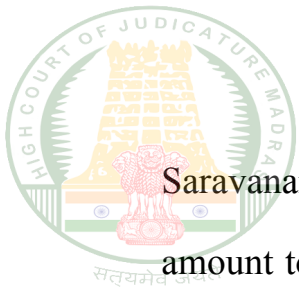
For Respondents: Mr.R.Venkatesan

JUDGMENT

The appellants are the defendants in the suit in O.S.No. 66 of 2022 filed by the respondents/plaintiffs for the relief of partition and other consequential relief. All were close relatives. Pending suit, on 09.11.2023 the suit was posted for filing written statement and due to lack of communication and illness of 2nd appellant, the defendants are not able to give instructions to file written statement. Hence, they were set exparte on 09.11.2023 and exparte decree was passed on 27.02.2024. So, to set aside the said exparte decree, an Interlocutory Application in I.A.No. 5 of 2024 was filed and the same was allowed with cost, which has to be paid on or before 08.01.2025.

2. The learned counsel for appellants would submit that already they have filed a memo stating that the cost was paid, but the trial judge has dismissed the said application on 10.01.2025 without taking into consideration of cost memo. Therefore, they come forward with this Civil Miscellaneous Appeal to set aside the findings rendered in the memo filed by the appellants. Respondents counsel submit that cost was not paid in time.

3. On perusal of cost memo filed before the trial court, it reveals that on 08.01.2025 at 09.24 a.m. through UPI transaction the cost was paid to one



Saravanan. As per appellant's counsel instructions, the appellants have paid the amount to one Saravanan, who is not a party to the proceedings, however, they come forward to pay the cost. The suit is filed for the relief of partition and if they are not allowed to pay the cost, their right to defend the case will be defeated. So, in the interest of justice, this Court is inclined to allow this Civil Miscellaneous Appeal and to set aside the exparte decree passed by the trial court. Two weeks time is granted to the appellants to pay the cost as per the direction given by the trial court from the date of receipt of copy of this judgment. Accordingly, this Civil Miscellaneous Appeal is allowed. The learned trial judge is directed to proceed with the trial and dispose the case as expeditiously as possible. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

02-06-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. Addl. District Judge cum Fast Track Court, Arani.

2. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI J.

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