



WEB COPY

CMA No. 1576 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 1576 of 2023

1. V.Divyakrishnan (transgender)
D/o Vaiyapuri, 1/106, Mettukadu,
Pappambadi, Chinnaappampatty, Salem
District.

Appellant(s)

Vs

1. SHANMUGAM
S/o Ponnusamy, Amman Koil Kadu,
Kaliagoundanur, Sankari, Salem
District.

Respondent(s)

CMA No. 1576 of 2023

PRAYER

To set aside the Fair and decretal order dt. 17.03.2022 passed in IA No.01/2021 in OS No.55/2016 on the file of the III Additional District Judge, Salem, by allowing this CMA



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For Appellant(s): Mr.R.Marudhachalamurthy

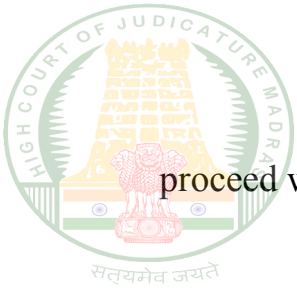
For Respondent(s): Mrs.V.Srimathi

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JUDGEMENT

This Civil Miscellaneous Appeal has been filed to set aside the Fair and decreetal order dt. 17.03.2022 passed in IA No.01/2021 in OS No.55/2016 on the file of the III Additional District Judge, Salem.

2. The appellant has filed I.A No. 1 of 2021 in OS No. 55 of 2016 under Order 9 Rule 9 of CPC seeking for restoration of suit which was dismissed for default. Further he submits that the appellant was examined as witness on 03.07.2019 and subsequently the suit was dismissed as the appellant has not came forward for cross examination. Later, the suit was restored on 08.10.2021 and the suit was posted for cross examination of the appellant on 02.11.2021 but the appellant has not appeared, therefore the suit was dismissed for default. After considering the both side submissions the learned judge held that the suit suit was ordered to restore as per order in IA No. 527 of 2019 but the appellant has failed to deposit the cost as per said order. Subsequently, the time has granted till 08.10.2021 to deposit the cost but the appellant has not inclined to

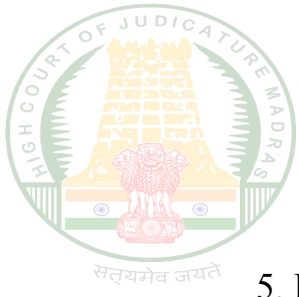


proceed with the matter. Accordingly, dismissed the application.

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3. The learned counsel for the appellant submits that due to lack of communication between the appellants and his counsel the appellant was not able to appear on that day and also he is having valid defence to prove his case. Hence, he seeks one more opportunity to prove his case.

4. Admittedly, the appellant has filed the suit for declaration in respect of suit property stating that sale deed was obtained from him forcefully and to declare the said document as null and void. Considering the above facts, if the opportunity is not given to the appellant his valuable right will be defeated. Though there is delay on the part of the appellant same cannot be considered at all circumstances each and every circumstances used to be viewed separately. Hence, this Court is inclined to give one more opportunity to the the appellant. Accordingly, the order passed by the III Additional District Judge, Salem in I.A No. 1 of 2021 in OS No. 55 of 2016 is hereby set aside. Thus, I.A No. 1 of 2021 in OS No. 55 of 2016 is allowed. Further, the appellant is directed to cooperate for the trial proceedings.



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5. In the result, this Civil Miscellaneous Appeal is allowed. No Costs.

10-07-2025

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To

1. The III Additional District Judge, Salem.
2. The Section officer, V.R Section, High Court, Madras.



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T.V.THAMILSELVI J.

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