



WEB COPY

CMA No. 2641 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 2641 of 2023

1.VELAYUDAM

S/o.Thirunavukarasu.

2.Rathi Thirupura Sundari

Appellant(s)

Vs

1.Sugunakumari

2.R.V.Vidyulath

3.V.Balasubramaniam

4.B.Chandrakala

5.Sundaramorthy

6.S.Saravanan

7.S.M.Sakthi

8.S.Alexander

9.Roshini Paris

10.M/s.Parrot Grove Private Ltd,

Rep. by its Director, T.K.Abdul Nazir,

having his office at No.13,

Ragaveera Avenue,

Poyas garden, Chennai-86.

Respondent(s)



WEB COPY

Civil Miscellaneous Appeal has been filed under Order XLIII Rule 1 of the Code of Civil Procedure, prayed to set aside the order dated 22-07-2023 in I.A.No.128/2017 in O.S.No.390/2008 passed by Additional District Judge, Kancheepuram at Chengalpattu.

For Appellant(s):

G Senthil Kumar

For Respondent(s):

R3 & R4 No appearance

R1 - Not Available

R2 - Out Of Station

R5 - No More

R6 - Refused

R7 - No Such Person

R9 & R10- Vacated

R8 - Unclaimed



JUDGEMENT

WEB COPY

The appellants have filed this appeal to set aside the order dated 22.07.2023 in I.A.No.128/2017 in O.S.No.390 of 2008 passed by Additional District Judge, Kancheepuram at Chengalpattu.

2. Challenging the order passed by the Tribunal, the appellants / petitioners preferred I.A. No. 128 of 2017 in O.S. No. 390 of 2008 on the file of the Additional District Judge, Kancheepuram, Chengalpattu, the petitioner preferred this appeal. Before the trial Court, they had filed a suit for declaration and recovery of possession along with other reliefs against the defendants/respondents.

3. In the year 2008, the respondents contested the suit and filed a written statement. The suit became ripe for trial and was posted for hearing on 11.01.2017. However, due to illness, the appellants / petitioners were unable to appear before the Court, and accordingly, the suit was dismissed for default. To restore the same, the appellants / petitioners filed an interlocutory application

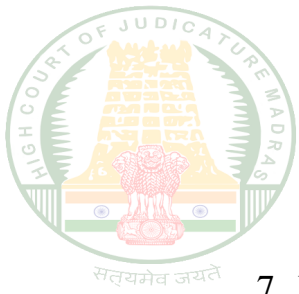


within 30 days. The respondents contested the said application, contending that the petitioners had wantonly dragged on the proceedings and had not produced any medical proof to substantiate their illness.

4. On considering the submissions of both sides, the learned Trial Judge held that despite several adjournments sought by the petitioner, they failed to appear when the matter was posted for final hearing. The Trial Court further held that there was no adequate medical proof produced regarding the alleged illness.

5. The Court, therefore, concluded that the appellants / petitioners were independently evading the proceedings. Aggrieved by this finding, the appellants petitioners have now filed the present appeal challenging the same.

6. Notice was served, and the name was printed in the cause list, but none appeared on behalf of the respondents.



WEB COPY

7. Upon perusal of the records, it is revealed that in the year 2008, the appellants / petitioners had filed a suit for declaration and recovery of possession against ten defendants. Some of the defendants appeared and contested the case. The suit was ripe for trial after the issues were framed in 2012. Thereafter, the appellants/plaintiffs failed to proceed with the trial, and hence, the suit was dismissed for default.

8. The learned counsel submits that Due to illness, they not able to appear. On the day of the trial for that, he produced one medical certificate. But the Trial judge held that it is not sufficient to conclude that he was continuously suffered with ailment.

9. The learned counsel for the appellants submitted that the appellants were unable to appear on the day of trial due to illness and had produced a medical certificate in support. However, the learned Trial Judge held that the certificate was insufficient to prove that the appellants were continuously



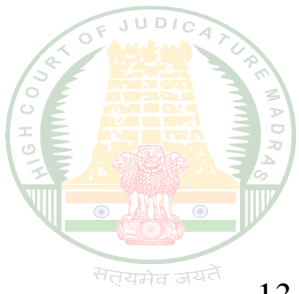
suffering from any ailment.

WEB COPY

10. On the side of the respondents, documents marked as Ex.R1 to Ex.R6, including adjournment petitions filed by the appellants /petitioners, were produced, which showed that on nearly six occasions, the appellants / petitioners had sought adjournments. Considering the nature of relief sought, ownership and recovery of possession, and the fact that both parties are senior citizens, if an opportunity is not granted, the appellants' / petitioners' right to protect the properties will be defeated.

11. Hence, this Court is inclined to set aside the findings of the learned Trial Judge. Accordingly, the Civil Miscellaneous Appeal is allowed, subject to payment of costs.

12. The appellants are directed to pay a sum of Rs.5,000/- to the Tamil Nadu Legal Services Authority, Chennai, within one week from the date of receipt of a copy of this order. On such payment, the suit shall stand restored to the file of the Trial Court.



WEB COPY

13. The respondents are directed to co-operate with the trial proceedings without seeking unnecessary adjournments. The learned trial Judge is directed to dispose of the suit, after affording sufficient opportunities to both parties, within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs.

17-07-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

rri



CMA No. 2641 of 2023



To
WEB COPY

- 1.The Additional District Judge,
Kancheepuram, Chengalpattu.
- 2.The Section officer, VR-Section,
High Court of Madras.



WEB COPY

CMA No. 2641 of 2023





WEB COPY

CMA No. 2641 of 2023



T.V.THAMILSELVI J.
rri

CMA No. 2641 of 2023

17-07-2025