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CMA.No.3315 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3315 of 2024

and

CMP.No.27947 of 2024

1. K.M.Sahabudeen

2. M.Ibrahim

...Appellants

Vs.

N.Lakshmi Bhai (Died)

1. N.Vasanth

2. N.Sasikala

3. N.Kjumar Malavey

4. Sobha Malavey

5. Jothi Malavey

(Respondents 3 & 4 Rep. by their Power Agents

1.Balaji, 2.J.Premchand)

...Respondents

Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of C.P.C, seeking to set aside the order dated 29.08.2024 made in I.A.No.03 of 2022 in O.S.No.368 of 2014 on the file of III Additional District Court, Coimbatore.



CMA.No.3315 of 2024

WEB COPY

For Appellants : Mr.Mukunth, Sr.C
for M/s.Sarvabhuman Associates

For Respondents : Mr.G.Harikrishnan, for
M/s.S.V.Pravin Rathinam

JUDGMENT

Challenging the order dated 29.08.2024 made in I.A.No.03 of 2022 in O.S.No.368 of 2014 on the file of III Additional District Court, Coimbatore, the appellants have come up with this appeal.

2. It is the case of the appellants that, they are the 23rd and 24th defendants in the partition suit in O.S.No.368 of 2014 on the file of the III Additional District Judge, Coimbatore filed by the respondents/ plaintiffs alleging that, one Nagendra Rao filed a partition suit in O.S.No.144 of 1949 on the file of the II Additional Sub Court, Coimbatore in respect of the joint family property enjoyed by them, in which, a compromise decree was passed in I.A.No.230 of 1954 dated 15.06.1954 and the suit schedule properties were allotted to Narahari Rao, father of the plaintiffs. While so, the defendants 1 to 4, who are the brothers and Legal heirs of one of the deceased brother of the plaintiffs



CMA.No.3315 of 2024

WEB COPY

have alienated some of the items of the suit property to the other defendants, suppressing the fact that the plaintiffs had right over the suit properties. Hence, the said suit. However, due to ill health, as the appellants were not able to file a written statement on time, the appellants were set exparte, vide order dated 18.02.2019 which was followed by the exparte decree dated 30.11.2021. Thereby, the appellants filed application under Order 9 rule 13 of CPC in I.A.No.3 of 2022 seeking to set aside the exparte decree dated 30.11.2021 made in O.S.No.368 of 2014. However, the lower court, vide impugned order dated 29.08.2024 dismissed the said application. Challenging the same, the appellants have come up with the present appeal.

3. Learned counsel for the appellants submitted that, the appellants are the subsequent purchasers of suit schedule properties and they have purchased the same from the plaintiffs' brothers by parting huge money. While so, the respondents/plaintiffs, who are the sisters of the appellants' vendors filed a suit for partition as against their brother as well as the appellants herein and an exparte preliminary decree was passed on 30.11.2021, without hearing the appellants, which is wholly



CMA.No.3315 of 2024

unsustainable and the same is a clear violation of principles of natural justice. Thereby, the appellants filed a set aside application, however, without considering any of the above said facts, the lower court had dismissed the same, vide impugned order dated 29.08.2024, which is not sustainable. Learned counsel fairly submitted that, they are ready to pay any reasonable cost that may be imposed by this Court. Further, the appellants, filed an affidavit stating that, they will cooperate for the disposal of the suit in O.S.No.368 of 2014. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the respondents though objected to the plea of the appellants, however, fairly submitted that, if this Court is inclined to allow the appeal, this Court may fix a reasonable cost to be paid by the appellants and further this Court may issue direction to the trial court to dispose the suit within the reasonable time that may be fixed by this Court.

5. Heard learned counsel on either side and perused the materials available on record.



CMA.No.3315 of 2024

WEB COPY

6. In view of the stand taken by the learned counsel on either side, and notwithstanding the fact that there is inordinate delay, this Court, considers it appropriate to impose costs on the appellants for setting aside the order. Accordingly, the appellants are directed to pay a sum of Rs.20,000/-(Rupees Twenty Thousand Only) to the respondents/plaintiffs within a period of two weeks from the date of receipt of a copy of this order and upon production of necessary proof with regard to payment of cost as ordered by this Court in favour of the respondents/plaintiffs, the trial court is directed to restore the suit and decide the same on merits within a period of six months thereafter, after affording an opportunity of hearing to the appellants and other aggrieved persons, if any.

7. Accordingly, this Civil Miscellaneous appeal stands allowed in the aforesaid terms. No costs. Consequently, the connected Miscellaneous petition is closed.

02.01.2025

skt

NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No



WEB COPY



CMA.No.3315 of 2024

M.DHANDAPANI, J.

skt

To:

The III Additional District Court,
Coimbatore.

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