



AS(MD). No.164 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2025

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE Mr.JUSTICE R.VIJAYAKUMAR

**AS. (MD). No.164 of 2018
and CMP(MD) No.9647 of 2018**

Mekhala

Appellant/defendant

Vs

S.R.G.Vignesh Raja

Respondent/plaintiff

PRAYER :-Appeal suit filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 29.06.2018 in OS No. 164 of 2013 on the file of the III Additional District Judge, Tiruchirappalli.

For Appellant : Mr.R.Suriyaprakash

For Respondent : Mr.G.S.Ashok Adithyan

JUDGMENT

(Judgment of the Court was delivered by C.V.KARTHIKEYAN, J.)

The appeal had been filed against the judgment and decree dated 29.06.2018 in OS No.164/2013 on the file of the III Additional District Court at Trichy.



AS(MD). No.164 of 2018

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2. The defendant therein is the appellant herein. OS No.164/2013 has been filed by the respondent seeking partition and separate possession of $\frac{1}{2}$ share of the suit property. In the plaint, it had been contended that the husband of the appellant herein and the respondent had both jointly purchased the suit property by way of five separate sale deeds dated 27.01.2010. They had proposed to put up a nursing home in the suit property. There were differences of opinion between them. Thereafter the respondent had taken a conscious decision to move away from the business but retained the right over the property. Since the properties were still in the names of both the respondent and the husband of the appellant, the suit was laid seeking partition and separate possession of $\frac{1}{2}$ share.

3. In the written statement filed, the co-ownership of the property had been admitted. However, it had been further stated that compensation had been paid to the respondent and an agreement in that regard had also been entered into. It had been contended that therefore there cannot be any partition as claimed either of the properties or the business.



AS(MD). No.164 of 2018

4. On the basis of the fact that co-ownership had been admitted, the respondent herein had initially filed IA No.199/2015 seeking preliminary decree to divide into two equal shares of the suit properties. This application was filed under Order 12 Rule 6 of the Code of Civil Procedure (in short 'Code'). Notice had been directed in the said petition and the appellant herein had entered appearance and had also filed a counter. Thereafter, the respondent had not appeared before the Court. This fact was noted by the trial Judge in the hearing dates 02.07.2015, 06.07.2015 and 20.07.2015 and finally frustrated by the non appearance of the respondent herein, the trial Court had dismissed the application for default.

5. Thereafter the respondent, instead of resorting to restore the said petition, had again filed IA No.120/2018. Thereafter, the trial in the suit had commenced.

6. The plaintiff tendered evidence as P.W.1 and marked Ex.A1 to Ex.A8. His evidence had thereafter closed. The husband of the appellant



AS(MD). No.164 of 2018

herein was examined as D.W.1. He marked Ex.B1 to Ex.B7.

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7. Thereafter IA No.120/2018 had again been filed once again under Order 12 Rule 6 of the Code by the respondent herein and taking note of the admission in the written statement, a preliminary decree was passed directing the division of the properties into two equal shares between the parties. That particular judgment and decree is put to challenge before this Court by way of this first appeal.

8. It is seen from the records that the application in IA No. 120/2018 had been filed on 16.04.2018, only after recording the evidence of D.W.1 on 04.04.2018.

9. We are constrained to bring to note Order IX Rule 9 of the Code, which is as follows:

“9.Decree against plaintiff by default bars fresh suit - (1) where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from



AS(MD). No.164 of 2018

bringing a fresh suit in respect of the same cause of action, but he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for the non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.”

10. We would also take recourse to Section 141 of the Code, which is as follows:

“141.Miscellaneous Proceedings: The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation: In this section, the expression “proceedings” includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution”



AS(MD). No.164 of 2018

The explanation to the said provision clearly indicates that the procedure provided in the Code relating to suits shall be followed as far as they shall be made applicable to all proceedings also under the Code and very specifically the expression '*proceedings*' had been stated to also include proceedings under Order IX of the Code. This would evidently mean it would also apply to Order IX Rule 9 of the Code and that order IX Rule 9 would not only apply to suits but also to interlocutory applications.

11. We therefore hold that IA No.199/2015 had been dismissed for default, the respondent could not have filed IA No.120/2018. It was pointed out to the III Additional District Judge that the present application was not maintainable. He had however proceeded under Section 11 CPC and had stated that an order of dismissal for default of an application filed under Order IX Rule 9 of the Code would not act as *res judicata* and therefore, proceeded to decree the suit as prayed for.

12. We hold that the learned trial Judge was not correct in that finding. He should have taken note of Section 141 of the Code and the



AS(MD). No.164 of 2018

Explanation to the same which provided that the procedures relating to suits would also apply to applications and specifically to applications under Order IX of the Code. We further hold that therefore there was obligation on the part of the respondent to file an application to restore the IA No.199/2015. He could not have filed a fresh application in IA No.120/2018. The said IA No.120/2018 should not have been taken note of by the learned trial Judge to pass the decree under Order IX Rule 6 of the Code. To that extent, the decree has to be interfered with and it is set aside. The suit will have to proceed from that stage at which IA No. 120/2018 had been filed namely at the stage of further examination of D.W.1.

13. We are informed that the respondent had also filed IA No. 372/2018 seeking final decree and a Commissioner had also been appointed and the Commissioner had also submitted a report. A direction is given that further proceedings in IA No.372/2018 are to be kept in abeyance. The trial in the suit is directed to be commenced from the stage at which it had been stalled at the time of filing IA No.120/2018 and proceeded further in the manner known to law. We would direct the



AS(MD). No.164 of 2018

learned trial Judge to complete the trial of the suit within a period of three months from the date of receipt of the judgment.

14. The Appeal Suit stands allowed. No costs. Consequently connected Miscellaneous Petition is closed.

[C.V.K,J]

[R.V,J]

07.11.2025

NCC : Yes

Index : Yes

RR

To

1.III Additional District Judge, Tiruchirappalli.

2.VR Section

Madurai Bench of Madras High Court, Madurai.



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AS(MD). No.164 of 2018

C.V.KARTHIKEYAN J.
AND
R.VIJAYAKUMAR, J.

RR

ORDER
IN
AS(MD) No.164 of 2018

Date : 07.11.2025