

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

**C.R.P.(NPD).No.2894 of 2014
and M.P.No.1 of 2014**

Sri Panduranganadhaswami Devasthanam
represented by its Trustee V.H.Jagadeesh
113, Manickam Street,
Shevapet, Salem-2.

... Petitioner

Vs.

1.Shevapet Sowrashtra Vidhyalaya Sabai
represented by its President,
64, Manickam Street,
Shevapet, Salem-2.

2.Shevapet Sowrashtra Maruthi Association
represented by its President,
Achi Ramasamy,
Shevapet, Salem-2.

... Respondents

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 02.07.2014 in I.A.No.465 of 2014 in A.S.No.35 of 2014 on the file of the II Additional District Judge, Salem.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.D.Shivakumaran

ORDER

Challenging the fair and decreetal order passed in I.A.No.465 of 2014 in A.S.No.35 of 2014 on the file of the II Additional District Court, Salem, the plaintiff in O.S.No.73 of 2010 on the file of the I Additional Subordinate Court, Salem, has filed the above Civil Revision Petition.

2.It is not in dispute that the plaintiff filed the suit in O.S.No.73 of 2010 under Section 92 of the Civil Procedure Code. The trial Court, by its judgment and decree dated 18.03.2014, decreed the suit. Aggrieved over the judgment and decree of the trial Court, the defendants preferred an appeal in A.S.No.35 of 2014 on the file of the II Additional District Court, Salem. In the First Appeal, the plaintiff took out an application in I.A.No.465 of 2014 to decide the jurisdiction of the Lower Appellate Court to proceed with the First Appeal and its connected petitions prior to the deciding of the First Appeal. The Lower Appellate Court dismissed the application finding that the District Court has got every jurisdiction to entertain the appeal. Aggrieved over the same, the plaintiff filed the above Civil Revision Petition.

3.Heard Mr.V.Raghavachari, the learned counsel for the petitioner and Mr.D.Shivakumaran, the learned counsel for the respondents.

4.Mr.V.Raghavachari, learned counsel appearing for the petitioner submitted that since the suit was laid under Section 92 of the Civil Procedure Code before the I Additional Subordinate Court, Salem, an appeal as against the judgment and decree passed in the suit would lie only before this Court and the II Additional District Judge, Salem has no jurisdiction to entertain the appeal as against the suit filed under Section 92 of the Civil Procedure Code. In support of his contention, the learned counsel relied upon a judgment reported in **(2010) 2 Supreme Court Cases 513 [Sri Jeyaram Educational Trust and others Vs. A.G.Syed Mohideen and others]** wherein the Hon'ble Supreme Court held as follows:

“15.The provisions of Section 12 of the Civil Courts Act specifying the pecuniary limits of District Courts and subordinate courts, is subject to the provisions of the Code of Civil Procedure. In view of the express provisions of Section 92 specifying the courts which will have jurisdiction to entertain suits under that section, neither the provisions of Sections 15 to 20 of the Code nor the provisions of Section 12 of the Civil Courts Act will apply to such suits. Section 92 is a self-contained provision, and conferment of jurisdiction in regard to suits under that section does not depend upon the value of the subject-matter of the suit. Therefore, insofar as the suits under Section 92 are concerned, the District Courts and subordinate courts will have concurrent jurisdiction without reference to any pecuniary limits.”

From the judgment of the Apex Court, it is clear that Section 92 is a self-contained provision and conferment of jurisdiction in regard to suits under that section does not depend upon the value of the subject matter of the suit. Further, the Apex Court held that insofar as the suits under Section 92 are concerned, the District Courts and Subordinate Courts will have concurrent jurisdiction without reference to pecuniary limits. When the District Courts and Subordinate Courts are having concurrent jurisdiction to entertain the suits, an appeal would lie only before the High Court and not before the District Court.

5. Therefore, in view of the judgment reported in ***(2010) 2 Supreme Court Cases 513 [Sri Jeyaram Educational Trust and others Vs. A.G.Syed Mohideen and others]***, which was also relied upon by the plaintiff before the Lower Appellate Court, the fair and decreetal order passed by the lower Appellate Court is liable to be set aside. Accordingly, the same is set aside and the application in I.A.No.465 of 2014 in A.S.No.35 of 2014 stands allowed. The Civil Revision Petition is allowed.

6. Since the application in I.A.No.465 of 2014 has been allowed by this Court, the II Additional District Judge, Salem, is directed to return the

papers to the appellants therein enabling them to file the appeal before this Court. The appellants in A.S.No.35 of 2014 are granted two weeks time for presenting the appeal before this Court from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

03.07.2015

To

- 1.The II Additional District Judge,
Salem.
- 2.The I Additional Subordinate Court,
Salem.

M.DURAIWAMY,J.
va

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