

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.S.A.No.234 of 2014
and
M.P.No.1 of 2014

A.Murugan

... Appellant/1st Defendant

vs

V.Selvaraj

... Respondent/Plaintiff

Appeal filed under Clause 15 of the Letters Patent read with Order XXXVI, Rule 9 of Original Side Rules against the order made in Application No.330 of 2014 in C.S.No.845 of 1999, dated 25.4.2014.

For Appellant : Mr.K.Meenakshi Sundaram

For Respondent : Mr.K.R.Ashok

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Admit.

2. At request of learned counsel for parties, the appeal is taken up for final disposal.

3. Application filed by the appellant in the original proceedings seeking to set aside the exparte decree, by invoking Order IX, Rule XIII of Code of Civil Procedure, 1908, has been dismissed by the impugned order dated 25.4.2014 predicated on the sole ground that such an application would not be maintainable, as

the appellant was never proceeded exparte before an exparte decree was passed.

4. We have issued notice to the respondent on the sole ground that the learned counsel for the appellant has drawn attention to an order dated 27.03.2007 when the appellant was proceeded exparte, as first defendant and thereafter, decree was passed on 23.04.2007. This factual position is not disputed by the learned counsel for the respondent (original plaintiff).

5. In view of the aforesaid, there is no option except to set aside the impugned order dated 25.4.2014 and restore the application filed by the appellant under Order IX, Rule 13 of Code of Civil Procedure, 1908 being Application No.330 of 2014 in C.S.No.845 of 1999 to be examined on merits by the learned Single Judge.

6. Appeal is, accordingly, allowed. Parties will have to bear their own costs. Consequently, M.P.No.1 of 2014 is closed.

7. Parties are directed to appear before the learned Single Judge on 19.03.2015.

Sd/-
Asst. Registrar

/true copy/

BBR

Sub Asst. Registrar.

To

The Sub-Assistant Registrar,
Original Side, High Court, Madras.
(With Direction for the parties to appear before the
single judge on 19/3/2015)

+1cc to Mr.K.R.Ashok, Advocate, S.R.No.11141

+1cc to Mr.V.Meenakshi Sundaram, Advocate, S.R.No.10620

UG(CO)
CA(11/03/2015)

O.S.A.No.234 of 2014

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