WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.04.2015

CORAM :
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Second Appeal (MD) No.239 of 2015
and MP(MD)NO.1/2015

1.Karuthameera
2.Syed Ibrahim ... Appellants/Appellants/Plaintiff

Vs.

1.Sait @ Sait Mohammed
2.Ismail
3.Naina Mohammed
4.Ayisha ... Respondents/Respondents/Defendants

Second Appeal is filed under Section 100 C.P.C against the judgment and decree in A.S.No.69 of 2013, dated 13.03.2014 on the file of the learned Subordinate Judge, Pudukottai confirming the judgment and decree in O.S.No.143 of 2009, dated 21.08.2013 on the file of the learned District Munsif, Pudukottai.

For Appellants : Mr.G.Muthuraman for Mr.M.Kannan

For Respondents: Ms.K.Mahalakshmi for
Mr.R.P.Ramachandran

JUDGMENT

A challenge is sought to be made against the decree of the lower Appellate Court namely, the Sub Court, Pudukottai dated 13.03.2014 made in A.S.No.69 of 2013 preferred against the decree passed by the Court of District Munsif, Pudukottai dated 21.08.2013 made in O.S.No.143 of 2009.

2.The Original Suit was filed by the appellants herein/plaintiffs for a declaration that the suit property absolutely belonged to them and for recovery of possession from the respondents herein/defendants. The learned District Munsif rejected the plaint under Order 7 Rule 11 C.P.C on the ground that the appellants herein failed to make good the deficiency of court fee despite opportunity given to them. An order rejecting the plaint as per Section 2(2) of Code Civil Procedure, 1908, is deemed to be a decree. Properly understanding the scope of the definition of "decree", the appellants herein chose to prefer an appeal before the lower Appellate Court, namely, the Sub Court, Pudukottai by filing an appeal under Section 96 of Code of Civil Procedure, 1908 as A.S.No.69 of 2013.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

3.The learned Subordinate Judge, Pudukottai, after hearing, concurred with the findings of the trial Court regarding valuation and payment of court fee and it found no discrepancy or infirmity in the order of the trial Court rejecting the plaint for non payment of the deficit court fee within the time granted by the trial Court. As against the said decree of the Appellate Court dated 13.03.2014 confirming the order of the trial Court rejecting the plaint under Order 7 Rule 11 C.P.C, the appellants herein did not choose to prefer a Second Appeal in accordance with the provisions found in Section 100 C.P.C. On the other hand, the appellants chose to prefer a revision on the assumed understanding of the provisions, that only a revision would lie as the appeal filed before the lower Appellate Court was not an appeal filed under Section 96 C.P.C against a decree of the trial Court but an appeal filed under Order 43 C.P.C against the order of the trial Court.

4.The logic sought to be assumed is quite contrary to the well known canons of interpretation of law. It seems a deliberate attempt was made by preferring a revision invoking Article 227 of the Constitution of India, when there was an effective and efficacious remedy of filing a Second Appeal under Section 100 C.P.C. This will be obvious from the fact that the appellants themselves filed a petition in M.P(MD)No.2 of 2014 in the Civil Revision Petition filed by the appellants herein, namely C.R.P(MD) No.2250 of 2014, purportedly under Section 151 C.P.C for the conversion of the said Civil Revision Petition into a Second Appeal. The said miscellaneous petition came to be disposed of by a non speaking order which reads as follows:

"Heard. This petition is allowed".

5.The scope of a Civil Revision Petition defers from the scope of a Second Appeal. In a Second Appeal, the appealing party should specify the substantial questions of law that arise for consideration in it. The grounds of Civil Revision Petition will not contain any such substantial question of law. The conversion of Civil Revision Petition into a Second Appeal without following proper procedure of amending the grounds, if need be, ought not to have been ordered. However, rightly or wrongly, the learned single Judge of this Court passed such an order in M.P(MD)No.2 of 2014 in C.R.P.(MD)No.2250 of 2014 on 11.02.2015. The same, being an order passed by a co-ordinate Bench, shall not be disregarded by this Bench.

6.However, the fact remains that without getting any order permitting the appellants to substitute the grounds of Civil Revision Petition with the memorandum of grounds of Second Appeal, the appellants seem to have produced a memorandum of grounds of Second Appeal with the additional court fee only on 02.03.2015. It is a mystery as to how the grounds of Second Appeal came to be stitched with the grounds of Civil Revision Petition, which was

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

directed to be converted into a Second Appeal. This Court is of the considered view that the said facts are enough for the rejection of the Second Appeal.

7.However, not intending to take such a short-cut method, this Court heard the submissions of Mr.G.Muthuraman, learned counsel appearing on behalf of the learned counsel appearing for the appellants and considered the admissibility of the Second Appeal. Upon such consideration, this Court comes to the conclusion that there is no ground, whatsoever, to interfere with the concurrent findings of the Courts below, respectively in the suit and in the First Appeal, that the appellants herein failed to pay the deficit court fee and thus made the plaint liable to be rejected for the said reason under Order 7 Rule 11 C.P.C. Such a concurrent finding has not been shown to be perverse. No substantial question of law is proved to have arisen in the Second Appeal (converted from C.R.P). Accordingly, this Court is of the considered view that the Civil Revision Petition converted into the Second Appeal does not even merit admission and deserves dismissal at the threshold.

8.In the result, the Second Appeal is dismissed. However, taking a lenient view, this Court does not pass an order regarding costs. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

sms

To

1.The Subordinate Judge, Pudukottai.

2.The District Munsif Court, Pudukottai.

+1cc to MR. M.KANNAN,ADVOCATE IN SR NO. 19596

+1cc to MR.R.P.RAMACHANDRAN,ADVOCATE IN SR NO.19172

Second Appeal (MD) No.239 of 2015
15.04.2015

RG.13.05.2015 3P.5C.

https://hcservices.ecourts.gov.in/hcservices/