

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.189 of 2015
and M.P No.1 of 2015

Thirunavukkarasu

... Petitioner

vs

1. Mrs.Uma Maheswari
2. K. Arunkumar (deceased)

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 15.09.2014 passed in CMP No.1001 of 2013 in A.S.No.432 of 2010 by the learned IV Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.C. Umashankar
For Respondents : Mr.S. Sudhakaran

ORDER

Aggrieved over the fair and final order passed in CMP No.1001/2013 in A.S.No.432/2010 on the file of IV Assistant City Civil Court, Chennai, the second defendant in O.S.No.1034/2006 on the file

of IV Additional Judge, City Civil Court, Chennai, has filed the above civil revision petition.

2. The plaintiff filed a suit in O.S.No.1034/2016 for declaration and permanent injunction. After contest, the trial court dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No.432/2010. In the first appeal, the plaintiff took out a petition in CMP No.1001/2013 under Order 41 Rule 27 of Civil Procedure Code to produce additional documents.

3. When the settled position is that the application, filed under Order 41 Rule 27 of the Civil Procedure Code has to be dealt along with the main appeal, the lower appellate court, had erroneously allowed the application, by separate order. Aggrieved over the same, the second defendant has filed the above civil revision petition.

4. In the judgment reported in **2010 11 SCALE 614 (Malayalam Plantations Ltd vs State of Kerala and another)**, the Hon'ble Supreme Court held that the application under Order 41 Rule 27 of Civil Procedure Code should be disposed of along with appeal and not by separate order.

5. The ratio laid down by the Hon'ble Supreme Court in the judgment reported in **2010 11 SCALE 614 (Malayalam Plantations Ltd vs State of Kerala and another)** squarely applies to the facts and circumstances of the present case.

6. In view of the same, while setting aside the order passed in CMP No.1001/2013, I remit the matter back to IV Additional Judge, City Civil Court, Chennai for fresh consideration. The IV Additional Judge, City Civil Court, Chennai is directed to consider the application fresh along with the appeal in A.S.No.432/2010 as well as the petition in CMP No.1001/2013, on merits and in accordance with law, uninfluenced by the order passed in CMP No.1001/2013 within a period of three months from the date of receipt of a copy of this order. With these observations, the civil revision petition stands allowed. No costs. Consequently, connected MP is closed.

20-07-2016

sr

Index:no
website:yes

To

The IV Additional Judge, City Civil Court, Chennai.

M. DURAISWAMY,J.,

sr

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