

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

S.A.No.949 of 2015

and

M.P.No.1 of 2015

Balraj

... Appellant

-vs-

1.Baby
2.Vanitha
3.Gayathri alias Rajathi
4.Saraswathi alias Ammu

... Respondents

Prayer : Second appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.20 of 2012 dated 23.04.2015 on the file of the Sub Court, Mannargudi, confirming the judgment and decree in O.S.No.18 of 2011 dated 17.11.2011 on the file of the District Munsif-cum-Judicial Magistrate, Needamangalam.

For Appellant : Mr.S.Thiruvengkataswamy

For Respondents : Mrs.P.T.Ramadevi

JUDGMENT

This Second Appeal is filed against the judgment and decree made in A.S.No.20 of 2012 dated 23.04.2015 on the file of the Sub Court, Mannargudi, confirming the judgment and decree made in O.S.No.18 of 2011 dated 17.11.2011 on the file of the District Munsif cum Judicial Magistrate, Needamangalam.

2.The defendant in a suit for permanent injunction is the appellant before this Court. The respondents herein as the plaintiffs filed the said suit seeking for permanent injunction restraining the defendant from cutting the trees or making any permanent pathway in the suit property. The said suit was transferred to the District Munsif-cum-Judicial Magistrate, Needamangalam and re-numbered as O.S.No.18 of 2011. After contest, the Trial Court decreed the suit as prayed for by its judgment and decree dated 17.11.2011. Challenging the judgment and decree of the Trial Court, the defendant filed A.S.No.20 of

2012 on the file of the Sub Court, Mannargudi. The Appellate Court, by its judgment and decree dated 23.04.2015 dismissed the appeal, thereby confirming the judgment and decree of the Trial Court. Hence, the present second appeal is filed before this Court by unsuccessful defendant.

3.The core contention of the defendant/appellant herein is that the Lower Appellate Court, in its judgment and decree, has erroneously applied different set of facts and circumstances of the case which are totally unconnected with the facts and circumstances of the present case as pleaded by the parties and dismissed the appeal in total non-application of mind by misreading and misconstruing the facts.

4.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials placed before this Court.

5.A bare perusal of the judgment rendered by the Lower Appellate Court would reveal that the learned Judge has applied facts and circumstances of a different case wrongly to the case on hand and proceeded to dismiss the appeal based on such erroneous consideration and application of facts and circumstances. Thus, this Court finds that the following substantial questions of law arise for consideration in this appeal:

"1.Whether the Judgment and Decree of the Lower Appellate Court rendered in A.S.No.20 of 2012 dated 23.04.2015 on the file of the Sub Court, Mannargudi are sustainable in law, when the Lower Appellate Court has considered the facts of a different case unrelated to the facts and circumstances of the case involved in O.S.No.18 of 2011 on the file of the District Munsif-cum-Judicial Magistrate Court at Needamangalam?

2.Whether the Lower Appellate Court Judgment and Decree made in A.S.No.20 of 2012 is liable to be reversed and set aside on the ground of misreading and misconstruing the facts and records when the Appellate has filed the appeal relating to the issues involved in O.S.No.18 of 2011 on the file of the District Munsif-cum-Judicial Magistrate Court, Needamangalam?

6.Accordingly, this second appeal is admitted on the above said substantial questions of law and taken up for final disposal, since the learned counsel appearing for the respondents is fair enough to concede to the position that the Lower Appellate Court has passed the judgment by applying wrong

facts and circumstances of a different case to the case on hand which is also evident on the face of the judgment of the Lower Appellate Court itself. Hence this Court, without going into the merits of the matter, is satisfied and inclined to set aside the judgment and decree of the Lower Appellate Court and to remit the same to the Lower Appellate Court for fresh consideration of the appeal on merits and in accordance with law.

7. Accordingly, the above substantial questions of law are answered in favour of the appellant and consequently, the second appeal is allowed and the judgment and decree made in A.S.No.20 of 2012 on the file of the Sub Court, Mannargudi, are set aside. The matter is remitted back to the Lower Appellate Court for fresh consideration of all aspects on merits and in accordance with law. The Lower Appellate Court, viz., the Sub Court, Mannargudi, after hearing both the parties, shall dispose of the appeal within a period of four weeks from the date of receipt of a copy of this order. Since this Court has not expressed any view on merits, it is open to both the parties to make their submissions on all points before the Lower Appellate Court. No costs. Consequently connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Sub Court,
Mannargudi.
2. The District Munsif-cum-Judicial Magistrate,
Needamangalam.

Copy to:

The Section Officer,
V.R. Section,
High Court, Madras.

+ 1 cc to Mr. S. Thiruvengataswamy, Advocate SR 34620

+ 1 cc to M/s. Ramadevi, Advocate SR 34828

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