

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.2263 of 2010
and M.P.No.1 of 2010

1.Amsavalli
2.Venkatesan

... Petitioners

Vs.

Kamalam Ammal

... Respondent

Civil Revision Petition filed under Article 227 of the Civil Procedure Code against the fair and decreetal order dated 12.04.2010 made in I.A.No.40 of 2010 in A.S.No.32 of 2008 on the file of the Subordinate Judge, Chidambaram.

For Petitioners : Mr.A.Muthukumar

For Respondent : Dr.C.Ravichandran

ORDER

Challenging the fair and final order passed in I.A.No.40 of 2010 in A.S.No.32 of 2008 on the file of the Subordinate Court, Chidambaram, the defendants in O.S.No.111 of 2007 on the file of the Principal District Munsif Court, Chidambaram have filed the above Civil Revision Petition.

2.The respondent/plaintiff filed the suit in O.S.No.111 of 2007 for permanent injunction.

3.After trial, the trial Court decreed the suit. Aggrieved over the same, the defendants filed an appeal in A.S.No.32 of 2008 on the file of the Subordinate Court, Chidambaram. In the said Appeal, the defendants took out an application in I.A.No.40 of 2010 under Order 41 Rule 27 of the Civil Procedure Code for producing an un-registered under-stamped Release Deed dated 22.07.1989 as an additional document. According to the revision petitioners, the Release Deed is vital for adjudication of the Appeal, hence, the document should be marked as an additional document in the proceedings. The respondent/plaintiff filed her counter and opposed the petition. The Lower Appellate Court, taking into consideration the case of both parties, dismissed the application finding that a similar application was also filed before the trial Court in O.S.No.111 of 2007 for marking the said Release Deed, which was rejected by the trial Court and that no Appeal or Revision was filed by the defendants challenging the said order. Admittedly, the defendants have not challenged the order passed in the application filed by them seeking to mark the Release Deed as an additional document before the trial Court.

4.The learned counsel appearing for the petitioners submitted that the defendants have raised the dismissal of the application, by the trial Court, as a ground in the First Appeal. The Lower Appellate Court dismissed the application finding that the order of the trial Court was not challenged by the defendants by a separate proceedings.

5.It is settled position that when an application is filed under Order 41 Rule 27 of the Civil Procedure Code before the Lower Appellate Court, in an Appeal proceedings, the application should be disposed of only along with the Appeal and not by a separate order.

6.The learned counsel appearing for the petitioners, in support of his contention, relied upon a judgment reported in ***(2008) 12 Supreme Court Cases 739 [Eastern Equipment & Sales Limited Vs. Ing. Yash Kumar Khanna]*** wherein the Hon'ble Supreme Court held that the Appellate Court should take up the Appeal along with the application filed under Order 41 Rule 27 of the Civil Procedure Code and not by a separate order.

7.The ratio laid down by the Apex Court squarely applies to the facts and circumstances of the present case. The Lower Appellate Court should have taken up the application in I.A.No.40 of 2010 along with the Appeal and

disposed of the same at the time of deciding the Appeal.

8.In these circumstances, I am of the considered view that the fair and decretal order passed in I.A.No.40 of 2010 are liable to be set aside. Accordingly, the same are set aside. The matter is remanded to the Subordinate Court, Chidambaram for fresh consideration. The Subordinate Judge, Chidambaram is directed to consider the application in I.A.No.40 of 2010, on merits and in accordance with law, along with the Appeal in A.S.No.32 of 2008. The parties are at liberty to raise all the issues before the Lower Appellate Court, while deciding the Appeal and also the application in I.A.No.40 of 2010.

9.With these observations, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

30.06.2016

To

- 1.The Subordinate Judge,
Chidambaram.
- 2.The Principal District Munsif Court,
Chidambaram.

M.DURAIWAMY,J.
va

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