

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.705 OF 2016

AND

CMP NO.13349 OF 2016

1.M.Vijayalakshmi
2.M.Sivakumar
3.M.Sundaravadivelu
4.M.Kalaiselvi

... Appellants/Respondents 2 to
5/ Defendants 2 to 5

vs.

1.B.P.Prasad ..Respondent/Appellant/Plaintiff
2.Sri Pachaimuthu
(R2 is given up) ..Respondent/1st Respondent/1st Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 15.04.2016 made in A.S.No.14 of 2009 on the file of Sub Court, Tambaram, reversing the judgment and decree dated 06.02.2008 made in O.S.No.2480 of 1997 on the file of District Munsif Court, Alandur.

For Appellant : Mr.R.Subramanian

For Respondents : Mr.R.Gandhi
Senior Counsel
for Dr.R.Gowri for R1
R2-Given up

J U D G M E N T

The appellants are the defendants 2 to 5 in a suit for a recovery of possession and for permanent injunction filed by the first respondent herein. The trial court dismissed the suit.

2.The plaintiff filed A.S.No.14 of 2009 on the file of the Sub Court, Tambaram. The Appellate Court originally heard the appeal and allowed the same on 19.04.2013.

3.It is seen that when the Appellate Court heard and decided the matter on the said day, the respondents before the Appellate Court, who are the appellants herein, were not duly represented.

Therefore, these appellants as the respondents before the First Appellate Court filed I.A.No.240 of 2014 , seeking for setting aside the judgment and decree passed on 19.04.2013 and for rehearing the appeal by condoning the delay of 7 days. It is seen that the Lower Appellate Court allowed the said application on 01.04.2015 and recalled its judgment and decree dated 19.04.2013. It appears that such order passed by the appellate court was not challenged by the plaintiff and thus the same has become final and conclusive. Thereafter, the appeal was taken by the lower Appellate Court for fresh hearing and after hearing both sides, the appeal was reserved for judgment on 04.04.2016. Thereafter, the appellate court pronounced the judgment on 15.04.2016 thereby allowing the appeal once again. Aggrieved against the judgment and decree of the lower Appellate Court, the present second appeal is filed by the defendants 2 to 5.

4.Though this second appeal is filed by raising many questions of law on merits of the decision made by the lower appellate court, the main grievance of the appellants is that the lower appellate court, after recalling the earlier judgment and decree passed on 19.04.2013 and hearing the appeal once again on merits, mechanically reproduced the earlier findings once again in verbatim without adverting to express any independent view and finding on the first appeal. Accordingly, this court is of the view that it would suffice to frame the following substantial question of law for the present to decide this appeal, as the main dispute between the parties, is in respect of the procedure adopted by the lower Appellate Court in disposing of the second appeal.

5.Thus, the present second appeal is admitted on the following substantial question of law:

"Is there any application of mind by the lower Appellate Court as seen from the fact that it has mechanically reproduced earlier judgment dated 19.04.2013 pronounced by the predecessor which has been set aside and the appeal was heard denovo?"

6.By consent, the main appeal itself is taken up for final disposal.

7.Mr.R.Subramanian, learned counsel for the appellants apart from submitting that the findings of the appellate court are totally erroneous on the merits of the case, has further submitted that the appellate court has committed a grave error in reproducing the very same findings, which were already recalled, verbatim in the present judgment.

8.Mr.R.Gandhi, learned Senior Counsel appearing for the first respondent/plaintiff per contra, submitted that the findings of the lower Appellate Court while allowing the appeal are made after considering the merits of the matter in detail

and by hearing both sides and therefore, the same need not be interfered with. However, the learned senior counsel fairly admitted the position that the lower Appellate Court has simply reiterated the earlier findings rendered on 19.04.2013, without expressing its finding on merits afresh after hearing the appeal once again.

9.I have perused the judgment passed by the lower Appellate Court.

10.It is seen that the lower Appellate Court after setting aside the judgment and decree earlier made in the appeal on 19.04.2013, has chosen to re-hear the appeal once again on merits and accordingly, after hearing both sides reserved the matter for judgment on 04.04.2016. The said decision to rehear the appeal was not challenged. However, while rendering the judgment after rehearing, the lower Appellate Court simply extracted the reasonings already made in the earlier judgment dated 19.04.2013 within inverted commas, commencing from A to Z of such reasonings found in the earlier judgment. Thereafter, the lower Appellate Court simply observed at paragraph No.15 that as it has already discussed all the disputed facts between the parties, it is necessary to interfere with the judgment and decree of the trial court. Therefore, the lower Appellate Court allowed the appeal and decreed the suit.

11. From the above stated facts and circumstances, which is evident on the face of the judgment, it is clear that the lower appellate court has not given any independent finding after rehearing the matter, except mechanically extracting the earlier findings once again in verbatim. Such course of action cannot be sustained, as it is evident that the lower Appellate Court has not expressed any view on the merits of the matter afresh, once it has chosen to rehear the matter. Needless to say that a decision based on certain findings if chosen to be recalled for the purpose of rehearing the matter afresh, it is the duty of the court to apply its mind to the respective submissions made by both sides and deliver the judgment afresh by setting out reasonings and findings. It may stick on to its earlier decision or take a different one. But what is required is the explicit application of mind. Such application of mind by the court must not only be explicitly apparent on the face of the judgment and also to be seen on its reasonings and findings. On the other hand, if the same findings verbatim are reproduced, it is nothing but to be called as peak of a mechanical approach unsustainable in law. Therefore, I find the judgment and decree passed by the lower Appellate Court cannot be sustained solely on the reason that the same were made mechanically without expressing any view on the merits afresh. Accordingly, the judgment and decree of the lower appellate court are set aside and the matter is remitted back, without expressing any view on the merits of the finding rendered therein, except to state that

the lower appellate court shall rehear the parties and pass the judgment and decree afresh on merits and in accordance with law. Thus, the substantial question of law raised above is answered in favour of the appellant. Consequently, the appeal is allowed and the matter is remitted back to the lower appellate court for rehearing the matter afresh and passing the judgment and decree in the appeal on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Sub Court,
Tambaram.

2.The District Munsif Court,
Alandur.

+1 cc to Mr.R.Subramanian, advocate,sr.49973

+1 cc to Ms.R.Gowri, advocate,sr.49707.

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