

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.1166 of 2015 and

M.P.No.1 of 2015

1.K.Ramalingam
2.K.Rajalingam
3.G.Valli
4.V.Gunasundari
5.K.Gnanasundari
6.Sakuntala

.... Appellants/Respondents/
Defendants 1 to 3

Vs.

1.G.Ramasamy
2.Chinnammal
3.Bhuvaneswari
4.Jayakodi
5.Mani

.... Respondents/Appellants/
Plaintiffs

Prayer: Civil Miscellaneous Appeal filed Order 43 Rule 1 read with Section 104 of the Code of Civil Procedure against the judgment and decree dated 07.02.2015 passed in A.S.No.87 of 2011 on the file of the II Additional Subordinate Judge, Cuddalore allowing the appeal and remanding the case reversing the judgment and decree dated 14.03.2011 passed in O.S.No.370 of 2007 on the file of the Additional District Munsif Court, Cuddalore.

For Appellant : Mr.R.Gururaj

For Respondents : Mrs.Hema Sampath, Senior Counsel
for Ms.R.Meenal

J U D G M E N T

Challenging the judgment and decree passed in A.S.No.87 of 2011 on the file of the II Additional Subordinate Court, Cuddalore, reversing and remanding the judgment and decree of the Additional District Munsif Court, Cuddalore in O.S.No.370 of 2007, the defendants 1, 2 and 4 to 7 have filed the above appeal. The 3rd defendant had died during the pendency of the First Appeal.

2.The plaintiffs filed the suit in O.S.No.370 of 2007 for declaration and permanent injunction.

3.The defendants filed their written statement and contested the suit.

4.Before the trial Court, on the side of the plaintiffs, 6 witnesses were examined and 45 documents, Exs.A1 to A45 were marked. On the side of the defendants, 2 witnesses were

examined and 7 documents, Exs.B1 to B7 were marked.

5.The trial Court, after taking into consideration the oral and documentary evidences, dismissed the suit.

6.Aggrieved over the judgment and decree of the trial Court, the plaintiffs preferred an appeal in A.S.No.87 of 2011 on the file of the II Additional Subordinate Court, Cuddalore. In the said appeal, the plaintiffs also filed an application in I.A.No.61 of 2014 under Order 41 Rule 27 of the Civil Procedure Code to produce additional documents. The Lower Appellate Court, by its order dated 07.02.2015, allowed the application by a separate order. The appeal was also allowed and remanded to the trial Court on the very same day, but, by a separate judgment and decree.

7.It is settled position of law that an application filed under Order 41 Rule 27 of the Civil Procedure Code should be disposed of only along with the appeal.

8.The ratio laid down by the Hon'ble Supreme Court in the judgment reported in (2001) 10 Supreme Court Cases 619 [State of Rajasthan Vs. T.N.Sahani and others] squarely applies to the present case. In the said judgment, the Apex Court held that an application under Order 41 Rule 27 should be decided along with the appeal.

9.In the case on the hand, I do not find anything on record to show that the application filed under Order 41 Rule 27 was disposed of along with the appeal. Though the application as well as the appeal were disposed of on the same day, they were disposed of by different orders. That apart, even if the Appellate Court finds that examination of witness to prove the correctness of additional documents is necessary, it could have examined the witnesses there itself without remanding the matter to the trial Court for the said purpose. Under Order 41 Rule 28 of the Code of Civil Procedure, the Appellate Court can also take such evidence to prove the documents sought to be produced as additional documents.

10.Since the Lower Appellate Court had disposed of the application in I.A.No.61 of 2014 filed under Order 41 Rule 27 by a separate order and not along with the appeal, the judgment and decree passed by the Lower Appellate Court in the appeal as well as the order passed in I.A.No.61 of 2014 are liable to be set aside. Accordingly, the judgment and decree passed in A.S.No.87 of 2011 and the order passed in I.A.No.61 of 2014 are set aside. The matter is remitted back to the II Additional Subordinate Judge, Cuddalore for fresh consideration. The II Additional Subordinate Judge, Cuddalore is directed to take up the application in I.A.No.61 of 2014 and decide the same on merits along with the appeal in A.S.No.87 of 2011 and dispose of the application as well as the appeal together. In the case of the Lower Appellate Court allowing the application in I.A.No.61 of 2014, it is open to

the Lower Appellate Court to give an opportunity to both the parties to examine the witnesses with regard to the additional documents sought to be produced by the plaintiffs. The II Additional Subordinate Judge, Cuddalore is directed to dispose of the appeal in A.S.No.87 of 2011 as well as the application in I.A.No.61 of 2014, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

11.With these observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

va
To

1.The II Additional Subordinate Judge,
Cuddalore.

2.The Additional District Munsif Court,
Cuddalore.

+1cc to Ms.R.Meenal, Advocate SR.No.84678
+1cc to Mr.R.Gururaj, Advocate Sr.No.84489

Copy to:The Section Officer,
VR Section,
High Court, Madras.(2 copies)

MR(CO)
sm:17.1.2018

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