

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2017

Coram

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.2018 of 2015 &
M.P.No.1 of 2015

Parvathy ... Appellant/Petitioner

v.

Mallika ... Respondent/Respondent

Appeal against the judgment and decree dated 01.11.2014 made in I.A.No.20 of 2014 in A.S.No.116 of 2011 on the file of the II Additional Sub Court, Salem.

For Appellant : Mr.V.Sekar

For Respondent : Mr.D.Sivakumaran

J U D G M E N T

Challenging the fair and final order passed in I.A.No.20 of 2014 in A.S.No.116 of 2011 on the file of II Additional Sub Court, Salem, the defendant in O.S.No.538 of 2008, on the file of II Additional District Munsif Court, Salem, has filed the above appeal.

2. The respondent-plaintiff filed the suit in O.S.No.538 of 2008 for recovery of possession. The Trial Court, by its judgment and decree dated 22.07.2011, decreed the suit. Against which, the appellant preferred an appeal in A.S.No.116 of 2011 on the file of II Additional Sub Court, Salem.

3. During the pendency of the appeal, since the appellant failed to appear before the Lower Appellate Court, the Lower Appellate Court, dismissed the appeal by its judgment and decree dated 21.03.2012. Thereafter, the appellant filed an Interlocutory Application in I.A.No.20 of 2014 in A.S.No.116 of 2011 under Order 41 Rule 19 of CPC to rehear the appeal.

4. Admittedly, the application was filed by the appellant within 30 days and there was no delay in filing the application. However, the Lower Appellate Court dismissed the application stating that the appellant has not given sufficient reason for rehearing the appeal, which was dismissed on 21.03.2012.

5. In the affidavit filed in support of the application, the appellant has stated that she was unwell and therefore, she was not in a position to give proper instruction to her counsel for prosecuting the appeal.

6. When the appellant has given sufficient reason for her non-appearance, the Lower Appellate Court should have given an opportunity to the appellant and should have reheard the appeal.

7. In these circumstances, I am of the considered view that the appellant may be given an opportunity to put-forth her case before the Lower Appellate Court. Accordingly, the fair and decreetal order passed in I.A.No.20 of 2014 in A.S.No.116 of 2011 are set aside. The application in I.A.No.20 of 2014 stands allowed. The appeal in A.S.No.116 of 2011 is taken on record and the II Additional Subordinate Judge, Salem, is directed to dispose of the appeal in A.S.No.116 of 2011, on merits and in accordance with law, within a period of two months, from the date of receipt of a copy of this order.

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

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Rj

To

The II Additional Sub Judge,
Salem.

+2cc to Mr.D.Sivakumaran, Advocate in sr.no.72018,72916

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NR 09/11/2017