

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

S.A. No. 52 of 2015
and MP. 1 of 2015

1.K.Prema
2.K.Giridharan
3.K.Geetha
4.Padmavathy

..Appellants

Vs.

1. Sadagopal
2. Vel Arasu

..Respondents

PRAYER:

The Second Appeal is filed under section 100 of Code of Civil Procedure against the Judgment and Decree dated 28.11.2014 passed in A.S.No.18/2014 on the file of the Principal District Judge, Vellore setting aside the order dated 12.08.2013 passed in I.A.No.55/2011 in O.S.No.58/2010 on the file of the Subordinate Judge, Gudiyatham, Vellore District.

For appellants :Mr.V.M.G.Ramakkannan

For respondents :Mr.T.Dhanya Kumar for R1

: No appearance for R2

ORDER:

The first respondent filed a suit in O.S.No.429 of 2005

before the District Munsif Court, Gudiyatham for permanent injunction restraining the second respondent herein from alienating the suit property in favour of the first appellant and her husband, Gubendran. Further, the first respondent herein filed a suit in O.S.No.58 of 2010 on the file of the Principal District Judge, Vellore for specific performance of contract of sale agreement dated 17.11.2003 to sell the schedule mentioned property to the plaintiff / first respondent. Subsequently, a written statement was filed by the second defendant in the suit. In view of the submissions made in the written statement, the aforesaid suit was dismissed as not pressed. Thereafter, an application in I.A.No.55 of 2010 in O.S.No.58 of 2010 under Order 7 Rule 11 of the Civil Procedure Code has been filed by the appellants / defendants to reject the plaint. The Trial Court has allowed the said application and rejected the claim of the first respondent in the suit for specific performance of contract of sale agreement dated 17.11.2003 to sell the schedule mentioned property to the plaintiff / first respondent. Challenging the said order, the first respondent / plaintiff filed an appeal in A.S.No.18 of 2014 before the Principal District Court, Vellore. After considering the submissions made by the parties concerned, the Appellate court set aside the order passed by the trial court and allowed the appeal. Challenging the said order, the second appeal

has been filed before this Court, by the defendants.

2. In view of the mixed question of fact involved in the suit, the issue will be decided before the trial court by framing necessary issues and decide the suit in accordance with law.

3. By consent of the learned counsel for both sides, the judgment and decree passed by the Appellate Court is set aside and the case is remanded to the trial court for framing issues under Order 2 Rule 2 of C.P.C. and decide the issues in accordance with law.

4. In view of the submissions made by the learned counsel for both the parties, this Second Appeal is allowed with a direction to the trial court to proceed with the suit in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.

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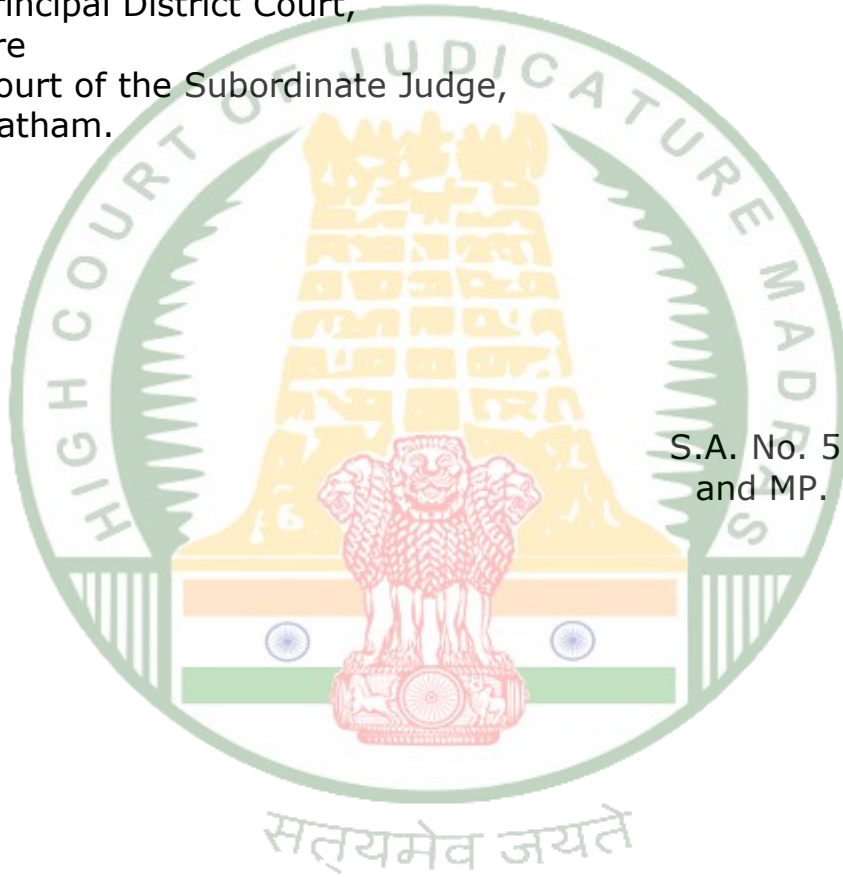
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D.KRISHNAKUMAR.J,

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To

1. The Principal District Court,
Vellore
2. The Court of the Subordinate Judge,
Gudiyatham.



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D.KRISHNAKUMAR, J.,

This appeal has already been disposed by this Court on 14.07.2017. At the request made by the learned counsel for the appellants, this petition is posted today under the caption 'for being mentioned'.

2. Heard both sides.

3. Invoking of Order 2 Rule 2 of C.P.C. is a mixed question of fact. By consent of both the parties, opportunity is granted to the petitioner to raise the preliminary issues before the trial court to decide the issues under Order 2 Rule 2 of C.P.C.

4. On 14.07.2017, this Court has passed the following order:

By consent of the learned counsel for both sides, the judgment and decree passed by the Appellate Court is set aside and the case is remanded to the trial court for framing issues under Order 2 Rule 2 of C.P.C. and decide the issues in accordance with law.

D.KRISHNAKUMAR, J.,

ssn

In view of the submissions made by the learned counsel for both the parties, this Second Appeal is allowed with a direction to the trial court to proceed with the suit in accordance with law. Consequently, connected miscellaneous petition is closed. No costs."

5. In view of the request made by the learned counsel for the appellants, the second appeal stands disposed of with liberty to the appellants to raise the preliminary issue under Order 2 Rule 2 CPC before the trial court.

6. On instructions, both the counsels undertakes that they will cooperate for the disposal of the suit, as expeditiously as possible.

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