



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.M.A(MD) No.512 of 2016

and

C.M.P(MD)No.6633 of 2016

and

C.M.P(MD)No.8672 of 2016

William Raj

..Appellant/Respondent/
Plaintiff

vs.

Joseph Savarirajan

..Respondent/Appellant/
Defendant

Prayer: The appeal filed under Order 43 Rule (1)(u) of Civil Procedure Code, against the order and decretal order in A.S.No.22 of 2010, dated 26.08.2015 on the file of the Subordinate Judge, Valliyoor reversing the order in O.S.No.165 of 2004, dated 22.04.2010 on the file of the Additional District Munsif, Valliyoor.

For Appellant : Mr.G.Ramanathan

For Respondent : Mr.G.Aravinthan

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the order passed in the first appeal in A.S.No.22 of 2010, dated 26.08.2015 by the Sub Court, Valliyoor reversing the order in O.S.No.165 of 2004, dated 22.04.2010 passed by the Additional District Munsif, Valliyoor.

2.The appellant is the plaintiff. He filed the suit in O.S.No.165 of 2004 on the file of the Additional District Munsif, Valliyoor for bare injunction. After contest, the suit was decreed by the judgment and decree, dated 22.04.2010. Against the said judgment and decree, the respondent filed A.S.No.22 of 2010. In the first appellate Court, the respondent filed two applications in I.A.No.14 of 2013 for receiving 10 documents and I.A.No.195 of 2014 for permission to file additional documents. The learned first appellate Judge had taken the additional 11 documents filed by the respondents and allowed the first appeal in A.S.No.22 of 2010 and remanded the suit to the Trial Court and directed the Trial Court to permit the parties to let in evidence and to consider all the issues afresh taking into consideration the documents filed before the trial Court as well the first appellate



3. Aggrieved against the said Judgment and Decree, dated 26.08.2015, the appellant has filed the present Civil Miscellaneous Appeal.

4. The contention of the learned counsel for the appellant that the suit is for bare injunction and question of title is not a issue in the suit. The first appellate Court without properly appreciating the provisions of Order 41 Rule 27 of the Civil Procedure Code has taken additional documents on file and allowed the first appeal remanding the suit for fresh disposal, has considerable force.

Order 41 Rule 27 of the Civil Procedure Code reads as follows:-

"21. Production of additional evidence in Appellate Court (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

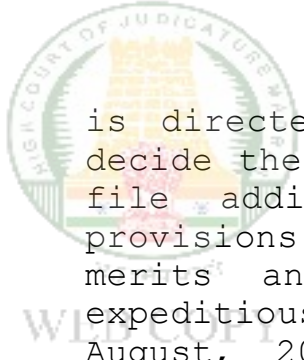
(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produce, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

5. The first appellate Court has not given any reason for receiving the additional documents filed by the respondent and has not stated that the first appellate Court requires those documents to enable it to pronounce judgment. The learned counsel for the respondent has not substantiated his claim for taking additional documents on file and has not substantiated the necessity of those documents to decide the issue, whether appellant is entitled to decree of injunction or not.

6. I have heard the learned counsel appearing for the appellant and the respondent and also perused all the materials available on record.

7. In the circumstances, the Civil Miscellaneous Appeal is allowed and the judgment and decree of the Sub Court, Valliyoor in A.S.No.22 of 2010 is set aside and the appeal in A.S.No.22 of 2010 is remanded to Sub Court, Valliyoor and the Sub Judge, Valliyoor



is directed to decide the appeal filed by the respondents and decide the applications filed by the petitioner for permission to file additional documents by considering the same as per provisions of Order 41 Rule 27 of the Civil Procedure Code on merits and dispose the appeal in accordance with law as expeditiously as possible, in any event, not later than 31st August, 2017. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CSIII)

/True Copy/

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Valliyoor.

2.The Additional District Munsif,
Valliyoor.

+One cc to Mr.G.Ramanathan, Advocate, SR.No.16868

+One cc to Mr.S.Subbiah, Advocate, SR.No.17314

am

RL/5C/3P/MR/SAR2/25.4.2017

C.M.A (MD) .No.512 of 2016

22.03.2017