



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.DURAISWAMY**

S.A.(MD)No.751 of 2016

and

C.M.P.(MD)Nos.11917 and 11918 of 2016

P.Palanichamy .. Appellant/Appellant/Defendant

**Vs.**

S.Tambithurai @ Selvaraj .. Respondent/Respondent/Plaintiff

**Prayer:** Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Principal Subordinate Court, Dindigul, dated 01.03.2016, passed in A.S.No.67 of 2007, concurring with the judgment and decree of II Additional District Munsif Court, Dindigul, dated 28.03.2007 passed in O.S.No.1417 of 2004.

For Appellant : Mr.T.S.R.Venkataramana

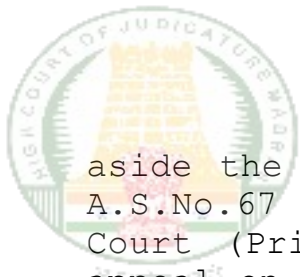
For Respondent : Mr.V.Maragathavel

**JUDGMENT**

Challenging the judgment and decree passed in A.S.No.67 of 2007, on the file of the Principal Subordinate Court, Dindigul confirming the judgment and decree passed in O.S.No.1417 of 2004, on the file of II Additional District Munsif Court, Dindigul, the defendant has filed the above Second Appeal.

2. Heard Mr.T.S.R.Venkataramana, learned Counsel appearing for the appellant and Mr.V.Maragathavel, learned Counsel appearing for the respondent.

3. The plaintiff filed the suit in O.S.No.1417 of 2004 for declaration and permanent injunction. After trial, the trial Court decreed the suit in O.S.No.1417 of 2004. Aggrieved over the same, the defendant preferred an appeal in A.S.No.67 of 2007. The lower Appellate Court set aside the judgment and decree of the trial Court and remitted the matter back to the trial Court for fresh consideration. Aggrieved over the order of remand, the defendant preferred an appeal in C.M.A.(MD)No.1480 of 2012 before this Court and this Court, by its judgment dated 14.03.2013, set



aside the order of remand passed by the lower Appellate Court in A.S.No.67 of 2007 and remanded the matter to the lower Appellate Court (Principal Subordinate Court, Dindigul) to dispose of the appeal on merits. Further this Court observed that if any of the parties filed an application for receiving the additional evidence or appointment of Advocate Commissioner, the first Appellate Court was at liberty to decide the application on merits and pass suitable orders.

4. Pursuant to the judgment passed in C.M.A.(MD)No.1480 of 2012, the Principal Subordinate Court, Dindigul took up the matter in A.S.No.67 of 2007. Both parties filed applications in I.A.No.28 of 2014, I.A.No.58 of 2014 and I.A.No.1 of 2016 under Order 41 Rule 27 C.P.C., for producing additional documents. The lower Appellate Court allowed all the applications while disposing of the appeal in A.S.No.67 of 2007. I.A.No.28 of 2014 and I.A.No.1 of 2016 were filed by the appellant herein. The respondent filed I.A.No.58 of 2014 under Order 41 Rule 27 C.P.C., for producing additional documents.

5. The learned Counsel appearing for the appellant submitted that even without giving an opportunity to the parties to let in oral evidence, the lower Appellate Court had allowed all the applications and dismissed the appeal filed by the appellant. The learned Counsel appearing for the appellant further submitted that the lower Appellate Court had not considered the documents filed by the appellant in I.A.No.28 of 2014 and I.A.No.1 of 2016, while dismissing the appeal.

6. On a perusal of the judgment passed by the lower Appellate Court, it is clear that the lower Appellate Court had simply allowed the applications filed under Order 41 Rule 27 C.P.C., even without giving an opportunity to the parties to let in oral evidence. That apart, the documents marked as additional documents were also not considered by the lower Appellate Court while dismissing the appeal. The lower Appellate Court should have considered the additional documents marked by the parties independently and given a finding with regard to those documents. Having allowed the applications filed under Order 41 Rule 27 C.P.C., the lower Appellate Court cannot brush aside the additional documents marked by the parties without giving any specific finding with regard to the documents.

7. Since the additional documents were not considered by the lower Appellate Court, I am of the view that the judgment and decree passed by the lower Appellate Court in A.S.No.67 of 2007 is liable to be set aside and the lower Appellate Court should be directed to dispose of the appeal afresh after considering the additional documents marked by the parties. Accordingly, the judgment and decree passed in A.S.No.67 of 2007 are set aside.



The matter is remitted back to the Principal Subordinate Court, Dindigul for fresh consideration with a direction to the lower Appellate Court to give an opportunity to the parties to let in evidence with regard to the additional documents marked by both parties and decide the appeal on merits and in accordance with law, after taking into consideration the oral evidence let in by both parties as well as additional documents marked by them. The Principal Subordinate Court, Dindigul is directed to dispose of the appeal on merits and in accordance with law as stated above within a period of two months from the date of receipt of a copy of this judgment.

8. With these observations, the Second Appeal is allowed. There shall be no order as to costs.

9. The appellant has filed an application in C.M.P.(MD) No.11917 of 2016 under Order 41 Rule 27 C.P.C., to produce additional documents. Since this Court has set aside the judgment and decree passed by the lower Appellate Court and remitted the matter back to the lower Appellate Court for fresh consideration, the appellant is at liberty to file an appropriate application before the lower Appellate Court for producing the additional documents and the lower Appellate Court is directed to decide the said application if any filed by the parties on merits and in accordance with law along with the appeal. In these circumstances, C.M.P.(MD)No.11917 of 2016 is closed and C.M.P.(MD)No.11918 of 2016 is also closed.

Sd/  
Assistant Registrar(C.S-I)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Dindigul.
2. The II Additional District Munsif, Dindigul.

**Copy to:** The Record Keeper, VR Section,  
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.T.S.R.Venkatramana, Advocate, in SR No.3640.  
+1CC to M/S.V.Maragathavel, Advocate, SR.No. 3667

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