

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.384 of 2001

1. Kaliyamurthy (Deceased)

2. Vasantha

First appellant died

Second Appellant LR of the deceased First Appellant
as per the Memo dated 11.06.2018 and vide court order
dated 11.06.2018 made in S.A.No.384 of 2001 PRMJ

.. Appellant

Vs.

Ramakrishnan High School,
Kondandapuram, rep by its
Secretary (Venkataparthasarth)

Dr.G.V.Gurumoorthy

Alangudi Village,

Sirkali Taluk and Munsif

Name substituted vide order of court dated 21.06.2018
made in S.A.No.384 of 2001 (PRMJ)

.. Respondent

Prayer :-

Second Appeal has been filed under Section 100 of CPC
against the judgment and decree dated 16.08.1999 made in
A.S.No.26 of 1999 and Cross Appeal on the file of the Principal
Sub Judge, Mayiladuthurai confirming the judgment and decree
dated 28.01.1999 made in O.S.No.183 of 1990 on the file of the
District Munsif Court, Sirkali.

For the appellants : Mr.S.Sounthar

For the respondent : Mr.K.R.A.Muthukrishnan

JUDGMENT

This second appeal has been filed by the defendants against
the judgment and decree dated 16.08.1999 passed in A.S.No.26 of
1999 on the file of the Principal Sub-Judge, Mayiladuthurai
confirming the judgement and decree passed by the District
Munsif, Sirkali in O.S.No.183 of 1990 dated 28.01.1999.

2. The respondent herein has filed a suit in O.S.No.183 of 1990 on the file of the District Munsif, Sirkali for recovery of possession of the suit " B " schedule property. The learned District Munsif has dismissed the said suit. Aggrieved by the same, the respondent herein has filed an Appeal in A.S.No.26 of 1999 on the file of the Principal Sub-Judge, Mayiladuthurai. The appellants herein have filed cross objection against the findings of the learned District Munsif that they are not owners of the suit " B " schedule property and they are only tenants. The learned Sub-Judge has dismissed both the appeal as well as cross objection. Aggrieved by the same, the defendants have preferred the present second appeal.

3. The respondent herein has filed a suit stating that the suit " B " schedule property belongs to the school and the appellants herein are tenants and hence the respondent has issued notice terminating the lease and filed a suit for recovery of possession. The appellants herein have taken a stand that they are the owners of the suit " B " schedule property and they are not tenants under the plaintiff. The learned District Munsif has found that the plaintiff is the owner of the land but the superstructure was constructed by the defendants and the land alone was leased out to the defendants. He further found that the lease was not properly terminated, accordingly he dismissed the suit. In the appeal filed by the plaintiff, the First Appellate Court has found that the plaintiff is the owner of both land and superstructure, however confirmed the judgment and decree of the trial court on the ground that the lease was not properly terminated. The cross objection filed by the defendants also dismissed by the first appellate court. As against the said judgment and decree, the plaintiff has not filed any second appeal. However, the defendants have filed the present Second Appeal challenging the findings of the first appellate court.

4. At the time of admission of the second appeal, this Court has formulated the following substantial question of law :-

(i) Whether the respondent is entitled to recover possession of the suit property without proving title of settlor under Ex.A.1?

(ii) Whether the judgments of the Courts below are vitiated by non-consideration of oral evidence on record? and

(iii) Whether the judgment of the Courts below are perverse?

5. Heard both sides.

6. The defendants have filed the present second appeal against findings of the First Appellate Court. At this juncture it would be relevant to refer the decision in Ganga Bai Vs. Vijay Kumar and others, CDJ 1974 SC 295 : AIR 1974 (SC) 1126, wherein the Hon'ble Supreme Court in para 16 and 17 has observed as follows:-

" 16. Under Section 96(1) of the Code of Civil Procedure, save where otherwise expressly provided by the Code or by any other law for the time being in force, an appeal lies from every decree passed by any Court exercising original jurisdiction, to the Court authorised to hear appeals from the decisions of such Court. Section 100 provides for a second appeal to the High Court from an appellate decree passed by a Court subordinate to the High Court. Section 104 (1) provides for appeals against orders of the kind therein mentioned and ordains that save as otherwise expressly provided by the Code or by any law for the time being in force an appeal shall lie " from no other orders." Clause (i) of this section provides for an appeal against " any orders made under Rules from which an appeal is expressly allowed by rules". Order 43, Rule 1 of the Code, which by reasons of Cl. (i) of S. 104(1) forms a part of that section, provides for appeals against orders passed under various rules referred to in Clauses (a) to (w) thereof. Finally, Section 105(1) of the Code lays down that save as otherwise expressly provided, no appeal shall lie from any order made by a Court in exercise of its original or appellate jurisdiction.

17. These provisions show that under the Code of Civil Procedure, an appeal lies only as against a decree or as against an order passed under rules from which an appeal is expressly allowed by Order 43, Rule 1. No appeal can lie against a mere finding for the simple reason that the Code does not provide for any such appeal. It must follow that First Appeal No.72 of 1959 filed by

defendants 2 and 3 was not maintainable as it was directed against a mere finding recorded by the trial Court. "

7. From the above said decision, it is clear that no appeal can lie against mere finding for the simple reason that the Civil Procedure Code does not provide for any such appeal. Therefore, this Second Appeal is not maintainable and the same is liable to be dismissed. Accordingly the substantial question of law is answered.

8. In the result, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

adl

To

1. The Principal Sub Judge, Mayiladuthurai.
2. The District Munsif Court, Sirkali.

Copy To

The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+lcc to Mr.S.Soundhar, Advocate, S.R.No.41804

S.A.No.384 of 2001

CP(CO)
CS/21/08/18

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