

HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU

SECOND APPEAL NO: 1 3 5 0 OF 2017

J U D G M E N T :

Heard the learned counsel for the appellant and the learned counsel for the respondents (along with Second Appeal No.1355 of 2017).

2. The learned counsel for the appellant points out from the appendix of evidence that only Exs.B-1 to B-12 were marked. However, in the operative portion of the judgment at Para No. 16, the first appellate court while dealing with the additional evidence that is received considered Exs.B-14, B-15, B-16 etcetera which are not the documents that are marked in this case. The counsel points out that the lower court has mixed up the documents marked in the other appeal, which is being challenged in S.A.No. 1355 of 2017 and has considered the documents marked in the other case in this case, as a result of which, there is an erroneous finding. There is force in the submissions. The documents that are not marked formed a part of the decision making.

3. Therefore, this Court is of the opinion that this is a fit case to be remanded to the first appellate court. The first appellate court is directed to hear the appeal afresh and dispose of the same according to law within a period of three months from the date of receipt of a copy of this judgment.

4. The learned counsel for the appellant also raised a serious issue about the case being barred by limitation. Even though

limitation is not specifically set up as defence in the lower court, the learned counsel is also permitted to raise the issue of limitation when the matter is heard afresh in the lower court, since Section 3 of the Limitation Act casts a burden on the Court to consider limitation even though the same is not pleaded as defence. Therefore, the lower Court is directed to hear the appeal afresh including on the question of limitation.

5. With the above direction, the second appeal is allowed and remanded to the first appellate court. No costs.

6. As a sequel, miscellaneous applications if any, shall stand closed.



JUSTICE D.V. S. S. SOMAYAJULU

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[R E S U L T : A L L O W E D & R E M A N D E D]



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