

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.20 of 2015
and C.M.P.No.1 of 2015

Balachandran .. Appellant/Plaintiff
[cause title accepted vide order
dated 12.12.2014 made in
M.P.No.1 of 2014 in
C.M.A.SR.No.89705 of 2014]

versus

Karuppannan .. Respondent/D2 in Trial Court

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of the Code of Civil Procedure, against the judgment and decree dated 30.06.2014 made in A.S.No.40 of 2013 on the file of the Sub Court, Namakkal, reversal of the judgment and decree dated 24.07.2012 made in O.S.No.156 of 2008 on the file of the Additional District Munsif Court, Namakkal.

For Appellant : Mr.N.Manokaran

For Respondent : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been directed against the impugned decree and judgment dated 30.06.2014 made in A.S.No.40 of 2013 passed by the learned Subordinate Judge, Namakkal, remitting the matter back to the trial Court for cross-examination of PWs by the defendants and also to adduce their oral and documentary evidence before the trial Court.

2. Mr.N.Manokaran, learned counsel for the appellant/plaintiff assailing the impugned order briefly stated that the appellant/plaintiff has filed the suit for permanent injunction not to form cart track road in the suit property. After issuance of summons, written statement was filed and thereafter, issues were framed. Before the trial Court, the plaintiff himself was examined as P.W.1 and one Ravikumar was examined as P.W.2 and also marked Ex.A.1 to Ex.A.4. On the side of the defendant, no oral evidence was let in and equally, no documentary evidence was marked and Ex.C.1 and Ex.C.2 were marked.

3. As the defendant has failed to come forward to cross examine P.W.1, he was called absent and there was no representation, the defendant's side evidence was closed. When the trial Court has rightly proceeded with the trial of the suit, the defendant/respondent having two options either to file an application under Order 9 Rule 13 of C.P.C. or to file First Appeal questioning the correctness of the ex parte decree has filed A.S.No.40 of 2013 falsely alleging that he was not given any opportunity by the trial Court.

4. Accepting the arguments advanced by the defendant/respondent herein, the learned First Appellate Court wrongly came to the conclusion that the defendant was not given opportunity by the trial Court. The reasoning given in the impugned judgment and decree clearly shows that the appellant/plaintiff and one Ramkumar were examined as P.W.1 and P.W.2 and thereafter, the suit was adjourned from time to time for cross examination of P.W.1 by the defendant before the trial Court. At one stage, the trial Court has mentioned in the notes paper that, sufficient time was granted to the defendant/respondent herein to cross examine P.W.1 and P.W.2. After chief examination of both P.W.1 and P.W.2, the defendant was called absent and there was no representation would clearly show that sufficient time was granted to the defendant/respondent. For the reason that the defendant/respondent had failed to proceed with the cross examination of P.W.1 and P.W.2, the learned trial Judge became helpless to proceed further, as the suit filed by the appellant/plaintiff for bare injunction restraining the defendant/respondent not to interfere with the suit property and not to form any cart track road was pending for long time.

5. Taking note of the conduct of the defendant in not coming forward to cross examine P.W.1 and P.W.2, the learned trial Judge after giving repeated opportunities to the defendant to cross examine P.W.1 and P.W.2 rightly closed the plaintiff's side evidence and also finding no representation from the defendant/respondent has closed the defendant's side evidence and thereon, passed the impugned order. Even the impugned judgment also clearly supports the case of the plaintiff/appellant that they have not dragged on the matter for long time. Therefore, the reasoning given by the learned First Appellate Judge that the defendant has not given opportunity to cross examine PWs is only misconceived. Hence, the judgment passed by the learned First Appellate Judge remitting back the matter to the trial Court is only unwarranted.

6. Today, when the matter is called, no one appeared on behalf of the defendant/respondent. The conduct of the defendant/respondent before this Court is nothing but the same one as shown before the trial Court. When the service was complete, the defendant has not chosen to appear before this Court. This Court also finds that when the trial Court has posted the case for chief examination of P.W.1 and P.W.2, the suit was adjourned from time to time for cross examination of P.W.1 by the defendants before the trial Court, after finding no representation whatsoever from the defendant/respondent herein, the learned trial Judge has rightly closed the plaintiff's side evidence and after giving reasonable opportunity to the defendant/respondent has also closed the defendant's side evidence.

7. As the documents were marked and the defendant has also filed written statement, taking note of the cross examination of P.W.1 and P.W.2, the learned trial Judge, in my considered opinion has passed the judgment on merits, which cannot be found fault with. Therefore, the order remitting the matter back to the trial Court for cross examination of PWs is without any substance and merits. Moreover, it is only the defendant/respondent chosen not to appear before the trial Court. Therefore, sufficient opportunity has been given to the defendant/respondent by the trial Court cannot be found fault with.

8. In fine, the Civil Miscellaneous Appeal stands allowed. The judgment and decree dated 30.06.2014 made in A.S.No.40 of 2013 passed by the learned Subordinate Judge, Namakkal, is hereby set aside and hence, the order passed by the learned Additional District Munsif, Namakkal in O.S.No.156 of 2008 dated 24.07.2012 is hereby confirmed. However, there is no order as to costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

sri

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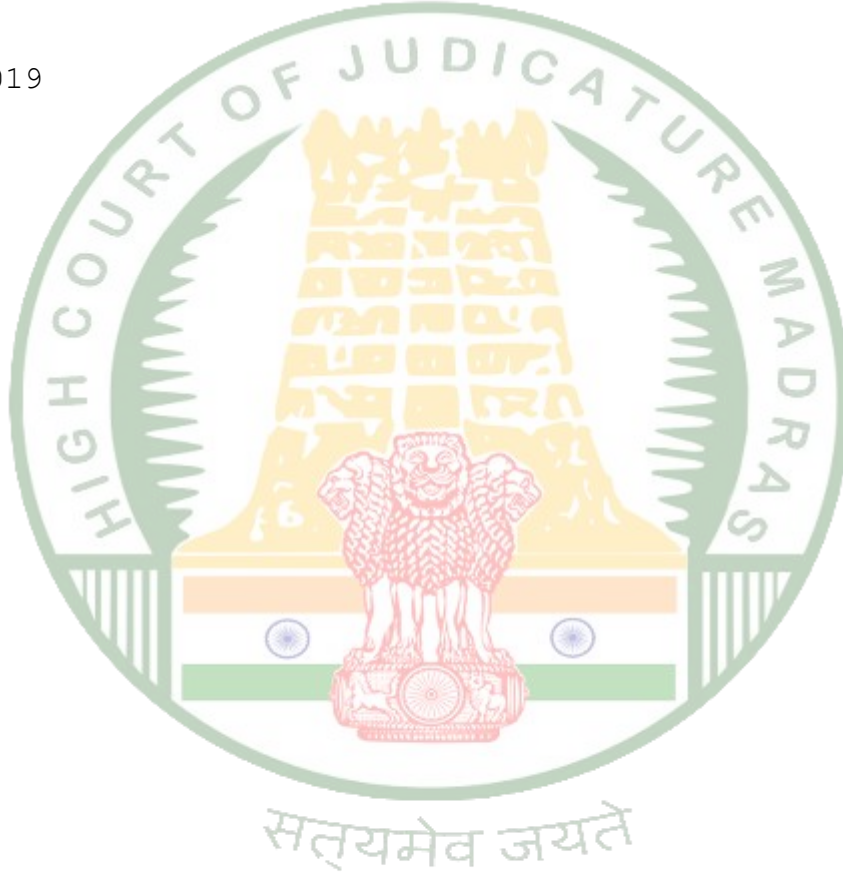
1.The Subordinate Judge, Namakkal.

2.The Additional District Munsif Court, Namakkal.

+1 cc to Mr.N.Manokaran Advocate sr 50532

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