

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1220 of 2004
and
Cross Objection No.5 of 2006

R.S.Manian,
S/o.S.Ranganathan,
No.461, T.V.K.Nagar,
Sembian,
Chennai-600 011.

... Appellant in S.A.No.1220 of 2004
and 1st Respondent in Cross.Obj.5/06

Vs.

S.A.No.1220 of 2004

1. Mrs.Bimla,
W/o.Selwin,
No.399, IV Block,
Mugapair,
Chennai-600 050.

...1st Resp.in SA.1220/04 and
Cross.Objector in Cross Obj.5/06

2. V.Thiyagarajan,
S/o.S.Viswanathan,
No.96, K.S.Nagar,
Kavankarai, Puzhal,
Chennai-600 066.

...2nd Respondent in SA.1220/04
and Cross Obj.5/06

PRAYER in S.A.No.1220 of 2004:- Second Appeal has been filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.08.2003 made in A.S.No.239 of 2002 on the file of the VI Additional City Civil Court, Chennai partly reversing the Judgment and decree dated 22.04.2002 and made in O.S.No.7094 of 1998 on the file of the VIII Assistant City Civil Court, Chennai.

PRAYER in Cross Objection No.5 of 2006:- Cross Appeal in filed under Order 41 Rule 22 of C.P.C against the judgment and decree passed in A.S.No. 239 of 2002 on the file of the VI Additional City Civil Judge, as far as refusal of specific

performance thereby modifying the judgment and decree passed in O.S.No.7094 of 1998 on the file of the VIII Assistant City Civil Judge, Chennai, granting decree for specific performance instead of directing the 1st respondent to pay back the consideration amount and confirmed the judgment of the trial Court.

S.A.No.1220 of 2004 & Cross Objection No.5 of 2006

For Appellant in SA
and R1 in Cros.Obj. : Mr.K.P.Gopalakrishnan

For R1 in S.A
and Cros.Objector : Mr.A.R.Nixon

For R2 in both cases: No appearance

J U D G M E N T

The learned counsel appearing for the appellant has argued the case at length, canvassing the demerits of the order passed by the VI Additional City Civil Court, Chennai by modifying the order passed by the trial Court. Whereas, in contra, the learned counsel for the respondents have also filed a cross objection, point out that the VI Additional City Civil Court, Chennai has grossly erred in receiving the additional documents and marking it as an Ex.B.1 to Ex.B.16, despite objection filed by the respondents herein contrary to the procedure laid under Order 41 Rule 27 and 28 of C.P.C

2. When a pertinent question was put to the learned counsel for the respective parties, through whom these documents were marked as Exhibits. The learned counsel for the appellant would only able to say that the Court on its own suo moto on receipt of the documents marked it as exhibits since, those documents were certified copies.

3. This Court is disheartened to note the manner in which the additional documents been received and marked in the appeal as Ex.B.1 to Ex.B.16, without following the procedure contemplated under Order 41 Rule 27 and 28 of C.P.C. Moreso, when the other side has made a serious objection for receiving the documents. On this short point, without advertng to the other demerits in the finding of the Lower Appellate Court, this Court set-aside the judgment of the Lower Appellate Court and remit back to the Lower Appellate Court to decide about the admissibility, proof and relevance of the additional documents filed and dispose the application and the Appeal suit in accordance with law.

4. In the result, the Second Appeal and Cross Objections are disposed of. The judgment and decree passed by the VI Additional City Civil Court, Chennai, in A.S.No.239 of 2002 dated 05.08.2003 is set aside. The VI Additional City Civil Court, Chennai is directed to take up the matter and disposed of the case, within a period of four months, from the date of the records received. The Case is remanded back to the Lower Appellate Court to decide the Appeal Suit afresh in accordance with law.

bsm

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The VI Additional City Civil Court,
Chennai.
2. The VIII Assistant City Civil Court,
Chennai.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.K.P.Gopalakrishnan, Advocate, SR.No.5190

+1cc to Mr.A.R.Nixon, Advocate, SR.No.5878

Second Appeal No.1220 of 2004
& Cross Objection No.5 of 2006

Kak (22/05/2019)

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