

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.149 of 2014
and M.P.No.1 of 2014

M/s.Everson Marine Harvest

Rep by it's Partners

1. Dhayagaran

2. Venkatraman

: Appellants/Defendants/Plaintiffs

Vs.

A.S.Kandasamy

: Respondent/Appellant/Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Principal Sub Court, Mayiladuthurai, dated 17.12.2012 in A.S.No.115 of 2011, reversing the judgment and decree of the District Munsif, Sirkali, dated 02.11.2011 in O.S.No.57 of 2010.

For Appellants : Mr.S.Sounthar

For Respondent : Mr.N.Manokaran

J U D G M E N T

The plaintiffs in O.S.No.57 of 2010 are the appellants herein. The suit was filed seeking bare injunction restraining the respondents from interfering the plaintiffs' peaceful possession and enjoyment of the suit property.

2. According to the plaintiffs, the suit property was purchased in the name of the defendant who is also a partner of the plaintiffs' firm. Claiming that the property was leased by the defendant in favour of the plaintiffs for a period of 25 years under a registered lease deed dated 11.03.1995 and the lease is valid upto 10.03.2020, the plaintiffs would contend that the defendant who is also a partner of the plaintiffs' firm is attempting to interfere with its possession of the suit property, hence the suit.

3. The suit was resisted by the defendant. While admitting the fact that the plaintiffs have been carrying on business from 05.01.1995 in marine products and the registration of the firm, the defendant would contend that the two partners who had filed the suit representing the plaintiff firm namely Mr.Dhayagaran and Mr.Venkatraman had retired from the partnership, therefore they have no right to institute the suit.

4. The trial Court upon consideration of the evidence on record decreed the suit. On appeal filed by the defendant, the lower appellate Court reversed the said judgment solely on the ground that the plaintiff is not shown to be the registered firm, relying upon the bar under Section 69 of the Indian Partnership Act, 1932.

5. Aggrieved, the plaintiffs are on appeal.

6. The following question of law was framed at the time of admission:

- i) Whether the Lower Appellate Court is justified in holding that plaintiff firm is an unregistered firm overlooking specific admission of DW1 that it is a registered firm?
- ii) Whether judgment of Lower Appellate Court is vitiated by misreading of evidence of DW1?

7. I have heard Mr.S.Sounthar, learned counsel for the appellants and Mr.N.Manokaran, learned counsel for the respondent.

8. Mr.S.Sounthar, learned counsel appearing for the appellants would contend that the lower appellate Court are not justified in invoking the bar under Section 69 of the Indian Partnership Act, since the defendant himself has in the written statement admitted that the plaintiff is a registered Partnership Firm. He would also draw my attention to the following pleading in paragraph 4 of the written statement:

"The allegations contained in paragraphs 4 and 5 of the plaint with regard to forming of partnership firm under the name and style of "Eversun Marine Harvests" on 05.01.1995 to carry on business activities in marine products by plaintiffs and other partners and the registration of the same are true and correct"

9. Therefore, the learned counsel for the appellant would submit that the lower appellate Court was not right in going into the question of maintainability of the suit on the assumption that the plaintiff is an unregistered firm.

10. Contending contra, Mr.N.Manoharan, learned counsel appearing for the respondent would submit that it is the duty of the plaintiffs to prove that it is a registered firm.

11. I have considered the rival submission.

12. The pleading extracted above would show that the defendant categorically admitted that the plaintiff is a registered firm. In view of the said admission, there was no occasion for the trial Court to go into the aspect of registration of the plaintiff firm or the maintainability of the suit. However, the lower appellate Court took upon the issue and concluded that the plaintiff cannot maintain the suit in the absence of registration. The fact that the plaintiff is a registered firm, is admitted in the pleading as well as in evidence. There is no issue framed regarding the non-registration of the firm by the trial Court. Only two issues were framed by the trial Court which reads as follows:

1. வாதிகள் வழக்கில் கோரிய நிரந்தர உறுத்துக் கட்டளைப் பரிகாரம் கிடைக்கக்கூடியதா-
2. தரப்பினர்களுக்கு வேறு என்ன பரிகாரம் கிடைக்கக்கூடியது-

13. The lower appellate Court unfortunately has misdirected itself in going to the question of registration of the firm and allowing the appeal without going into the other issues.

14. This Court and the Hon'ble Supreme Court had been repeatedly held that the lower appellate Court being a final Court of fact is bound to answer all the issues. It is rather unfortunate that the lower appellate Court should have adopted a short cut method to dispose of the first appeal by taking up non existent question of law and decide it in favour of the appellant and allowing the appeal, setting aside the decree granted by the trial Court, without going into the merits. This mode of disposal of a regular appeal shocks the conscience of this Court.

15. Therefore, the 1st question is answered in favour of the appellant. The Judgment and decree of the lower appellate Court is set aside and the first appeal in A.S.No.115 of 2011 is remitted to lower appellate Court viz., learned Principal Sub Court, Mayiladuthurai with a direction to examine the appeal on merits and dispose of the same within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

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Assistant Registrar
// True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub Court,
Mayiladuthurai.

2. The District Munsif,
Sirkali.

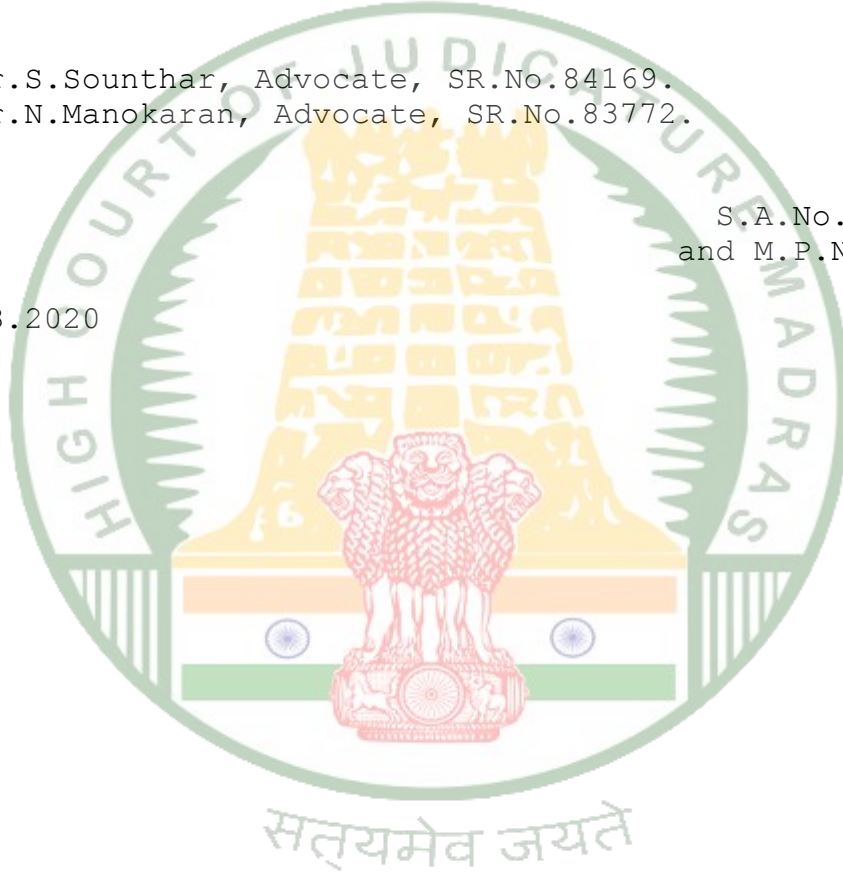
Copy to: The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.S.Sounthar, Advocate, SR.No.84169.

+1cc to Mr.N.Manokaran, Advocate, SR.No.83772.

S.A.No.149 of 2014
and M.P.No.1 of 2014

MP (CO)
CSR: 02.03.2020



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