



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2970 of 2009

and

M.P No.1 of 2009

Padmavathy

..Appellant/Plaintiffs

Vs.

1.A.Palanisamy

2.Ramasamy

..Respondents/Defendants

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the judgment and decree dated 22.04.2009 made in A.S.No.5 of 2009 on the file of the Additional District Judge, Fast Track Court No.4, Bhavani, reversing and remanding back the judgment and decree dated 07.11.2007 made in O.S No.143 of 2004 on the file of the Sub Court, Bhavani.

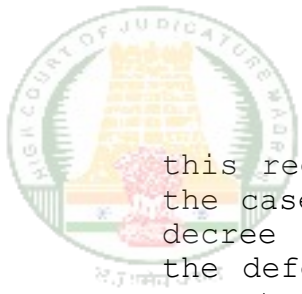
For Appellant : No Appearance

For Respondents: No Appearance

J U D G M E N T

The Judgment and Decree passed in A.S.No.5 of 2009 dated 22.04.2009 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellant is the plaintiff and the suit was instituted by the appellant for permanent injunction restraining the first defendant and his men from any way interfering with the peaceful possession and enjoyment of the suit property of the plaintiff or to trespass. The suit was decreed in favour of the plaintiff and the defendant has preferred an appeal in A.S No.5 of 2009. The first Appellate Court remanded the matter back to the trial Court mainly on the ground that the second defendant in the suit had not provided an opportunity to file a written statement and contest the suit. The arguments advanced before the first Appellate Court was that the second defendant cannot seek any relief in the suit filed by the plaintiff and he cannot claim any right regarding the suit property. Therefore, the first Appeal is to be dismissed. However, the first Appellate Court considered the fact that the defence to be submitted by the second defendant in the suit cannot be presumed and an opportunity is to be provided to the second defendant in



this regard to contest the case. The first defendant narrated the case of the pleading and he consented for the passing of the decree in favour of the plaintiff. Under those circumstances, the defence of the second defendant is vital for the purpose of ascertaining the truth behind the consent given by the first defendant in favour of the plaintiff. Thus, opportunity of filing written statement and to defend the suit as far as the second defendant is concerned would affect the very trial proceedings and therefore, the Appellate Court has chosen to remand the suit for the purpose of giving opportunity to the second defendant to defend the case.

3. This Court is of the considered opinion that the reasonings furnished by the first Appellate Court can be convinced and no infirmity as such. Undoubtedly, all the parties to the suit are entitled for an opportunity to defend the case. Admittedly, such an opportunity was not provided to the second defendant as he has not filed the written statement in the civil suit.

4. This being the factum, there is no perversity in respect of the judgment and decree passed by the first Appellate Court and the judgment and decree passed by the first Appellate Court in A.S.No.5 of 2009 stands confirmed. Consequently, the present Civil Miscellaneous Appeal No.2970 of 2009 stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge,
Fast Track Court No.4, Bhavani,

2. The Sub Court
Bhavani.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

C.M.A.No.2970 of 2009
M.P.No.1 of 2009

CNR(CO)
SP(29/10/2021)