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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NO.2854 OF 2009

AND

M.P.NO.1 OF 2009

M.V.Sundaram

.. Appellant/1st Respondent/Plaintiff

Vs.

1.A.S.Perumal

...1st Respondent/Appellant/1st defendant

2.A.S.Jayavel

3.A.S.Loganathan

.. Respondents/Respondents 2 & 3/
Defendants 2 & 3

PRAYER : Civil Miscellaneous Appeal is filed under Order XLIII Rule (i)(u) of Civil Procedure Code, against the order of the learned Subordinate Judge Ranipet dated 30.06.2009 made in A.S.No.50 of 2007 remanded the order of the learned District Munsif, Arakkonam, dated 14.10.2006 made in O.S.No.410 of 2004.

For Appellant : Mr.G.Jeremiah

For Respondents: Mr.S.Parthasarathy

J U D G M E N T

The appellant herein is the plaintiff in O.S.No.410 of 2004, who filed a suit against the respondents herein claiming a relief of permanent injunction and other consequential reliefs.

2. The respondents/defendants contested the suit.



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allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

6. As per the above Provision of Law, the Appellate Court is empowered to receive the additional evidence if he satisfied that after exercising of due deligent, he could not able to produce before the Trial Court. Coming to the facts in the instant case, the suit was filed in the year 2004 by this appellant for permanent injunction and other consequential reliefs. After full contest, the trial Court granted permanent injunction relief, not to cause interference from the peaceful possession and enjoyment of the suit property by the appellant/plaintiff therein. Aggrieved by the order, the appeal in A.S.NO.50 of 2007 was filed by the respondents in the year 2007.

7. During the pendency of the appeal, in the year 2008 which was filed by the respondents/defendants prayed to receive the two kist receipts as additional evidence. Immediately, the First Appellate Court remanded the entire matter to receive those documents by the Trial court and to dispose of the case by conducting fresh trial, and also setting aside the judgment passed in O.S.No.410 of 2004. As rightly pointed out by the appellant counsel the respondents herein/defendants ought to have stated the reason for non production of those documents before the Trial Court. But they have not submitted any reason, and without considering this aspect, the First Appellate Court erroneously set aside the judgment passed by the trial Court and remanded the matter for fresh trial. Moreover as per the Order 41 Rule 27 of CPC, the appellate Court has empowered to receive the documents, so the First Appellate Court itself entitled to receive those documents and disposed of the appeal on merits.

8. Accordingly, the order passed by the learned Appellant Judge in A.S.No.50 of 2007 is set aside. The First Appellate Court is directed to receive the additional documents like, kist receipt filed by the respondents herein / defendants, in accordance with law, and to dispose of the First Appeal in A.S.No.50 of 2007, on merits. Therefore, the order passed by the First Appellate court in A.S.No.50 of 2007 is set aside.



9. Accordingly, the Civil Miscellaneous Appeal is allowed and the order passed by the First Appellate Court in A.S.No.50 of 2007 is set aside and directed the First Appellate, Sub-Judge, ***Arakkonam**, to dispose of the case, on merits, by receiving the additional documents from the defendants / respondents herein, within a period of three months from the date of receipt of a copy of this judgment. Consequently connected Civil Miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar(I)
Dated : 27/09/2021

*** Corrected as per order of this Court,
dated 27/10/2021.**

Sd/-
Assistant Registrar(I)
Dated : 17/11/2021

//True Copy//

Sub Assistant Registrar

rri

To
1. The Subordinate Judge,
Ranipet.

2. The District Munsif,
Arakkonam.

***To be substituted
to the order
already
despatched on
26/10/2021**

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.13009

C.M.A.No.2854 of 2009
and
M.P.No.1 of 2009

PM(CO)
CB(29/09/2021)
RLP(25/11/2021)