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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.915 of 2012

D.Thillaigovindan (Deceased)

1.T.Kalyani

2.T.Thillai Sekar

3.T.Raj

4.T.Ravi

5.T.Deenadayalan

6.T.Balamurugan

7.V.Arivazagi

8.G.Vellankanni

9.R.Valliyammai

Cause title has been accepted vide an order
of this Court dated 17.07.2012 made in
M.P.No.2 of 2012 in SA.SR.No.50046/2011)

...Appellants/Plaintiffs

Vs.

K.R.Jothi

...Respondent/3rd defendant

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 01.02.2011 passed in A.S.No.82 of 2006 on the file of 1st Additional Subordinate Judge, Cuddalore confirming the Judgment and Decree dated 01.06.2006 passed in I.A.No.1223 of 2005 in O.S.No.11 of 2005 on the file of the Principal District Munsif, Cuddalore.

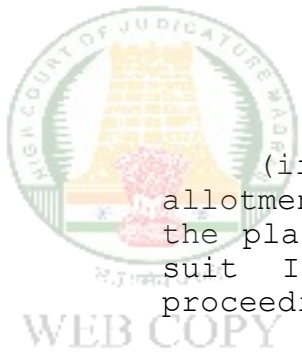
For Appellants : Mr.T.S.Baskaran

For Respondent : Mr.K.A.Ravindran

JUDGMENT

The unsuccessful plaintiff D.Thillaigovindan is the appellant in this appeal. He had filed the suit before the trial Court in O.S.No.11 of 2005 to

(i) pass preliminary decree for partition and separate possession of the plaintiff's vendor Manickam's 1/5th share in the suit properties



(ii) appoint an Advocate-Commissioner for suggestion for allotment of the property in suit Item-6 towards the share of the plaintiff and pass a Final Decree therefor equity allot the suit Item-6 in favour of the plaintiff in Final Decree proceedings

(iii) Award costs of the suit.

2. The said suit was contested by the respondent/3rd defendant by filing an application under Order 7 Rule 11 of C.P.C. The respondent/3rd defendant also filed written statement in the said suit. The trial Court allowed the said application filed under Order 7 Rule 11 of C.P.C and thereby rejected the plaint.

3. Against the Judgment and decree passed by the trial Court in I.A.No.1223 of 2005 in O.S.No.11 of 2005, the appellant/plaintiff filed A.S.No.82 of 2006 before the 1st Additional Subordinate Court, Cuddalore (Hereinafter referred to as the First Appellate Court). The First Appellate Court however dismissed the aforesaid appeal on merits while accepting the contention of the appellant that the suit should not have been dismissed under Order 7 Rule 11 of C.P.C by observing that res judicata is both mixed question of fact and law.

4. In this appeal, the appellants have raised the following questions of law as substantial questions of law as this appeal was not admitted and notice for admission was ordered on the respondent.

“(i) Whether the Judgment and the decree of the Learned District Judge in dismissing the appeal on the ground of technicality, but decided the appeal on merits in favour of the appellant ignoring the principle that, the procedural laws are handmaid of justice?

(ii) Whether the Judgment and Decree of the Learned District Judge, is contrary to the dictum pronounced by this Hon'ble court reported in 2007 (1) MLJ 77 that, “an appeal filed against the order passed in an application to reject the plaint filed can be treated as a regular appeal and there is no necessity to pay regular court fee”?

5. The learned counsel for the respondent is also present and defends the impugned Judgment and decree. He submits that the impugned Judgment and decree of the First Appellate Court is



well-reasoned and requires no interference. He further submits that the appellants/plaintiffs should have also filed separate appeal against the Judgment and decree in O.S.No.11 of 2005. He submits that instead of filing an appeal against the Judgment and decree passed in I.A.No.1223 of 2005 dated 01.06.2006 allowing the plea of the respondent/defendant under Order 7 Rule 11 of CPC, the appellants/plaintiffs should have also filed an appeal against the Judgment and decree passed in O.S.No.11 of 2005 dismissing the suit. He therefore submits that the present appeal is liable to be dismissed.

6. Heard the learned counsel for the appellants and the respondent.

7. In my view, the substantial questions of law raised in this appeal deserves to be answered in favour of the appellants/plaintiffs inasmuch as the First Appellate Court erred in dismissing the appeal on the ground of technicality but has also decided the case on merits without trial.

8. The impugned Judgment and decree of the First Appellate Court is contrary to the decision of this Court in K.S.Geetha Vs Stanley Buck and another, 2002 (3) CTC 477 and the decision of the Division Bench of this Court in Village Connection, Represented by its Partner, R.K.Soundhar Rajan Vs Prakash Transport, Chennai, 2007 (1) MLJ 77 (DB).

9. In the light of the above discussion, the impugned Judgment and decree passed by the Trial Court (Principal District Munsif Court) and the First Appellate Court (1st Additional Subordinate Court, Cuddalore) are set aside and O.S.No.11 of 2005 is restored to the Principal District Munsif Court, Cuddalore. The Principal District Munsif Court, Cuddalore is directed to frame issues and dispose the suit after conducting the trial in accordance with law.

10. Since the dispute pertains to the year 2004, the Principal District Munsif Court, Cuddalore shall endeavour to complete the proceedings within a period of 12 months from the date of receipt of a copy of this order.

11. This Second Appeal stands allowed in terms of the above observations. No costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar



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To:

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1. The 1st Additional Subordinate Court,
Cuddalore.
2. The Principal District Munsif Court,
Cuddalore.

Copy to

The Section Officer,
VR Section,
High Court, Madras - 104.

+1cc to Mr.T.S.Baskaran, Advocate, S.R.No.30078

S.A.No.915 of 2012

CA[co]
NSK 11/11/2021