

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.275 of 2016
and
C.M.P.No.5271 of 2016

1.Gajendran

2.Sivagami

3.Lokeshkumar

4.Jayanthi

5.Udayakumar ...Appellants/Appellants/Defendants
(cause title accepted
vide order of court dated
27.10.15 made in M.P.No.1 of 2015
in SASR No.73235/14)

Vs.

Rajaram ...Respondent/Respondent/Plaintiff

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 12.03.2014 passed in A.S.No.50 of 2013 by the II Additional Subordinate Judge, Cuddalore confirming the decree and judgment dated 13.09.2011 passed in O.S.No.295 of 2009 by the Principal District Munsif Court, Cuddalore.

For Appellants: Mr.D.Baskar

For Respondent: Mr.P.M.Subramaniam

J U D G M E N T

Aggrieved over the concurrent findings of the Courts below, the defendant has preferred the above Second Appeal.

2.The suit was filed by the respondent/plaintiff for declaration of title and injunction. The Trial Court framed appropriate issues and decreed the suit. On appeal, the

appellant herein filed an application under Or.41 R.27 C.P.C for receiving additional documents. The said application was numbered as I.A.No.15 of 2014 in A.S.No.50 of 2013. Even though the application was received by the Court below, it was not taken up along with the appeal while it was argued. The Appellate Court has proceeded on the materials placed before it without considering the application filed for receiving the additional documents. The First Appellate Court has disposed of the application by way of a separate order on the same day when the appeal was disposed of.

3. It is well settled that the application for receiving additional documents under OR.41 R.27 C.P.C and the appeal has to be considered together. It is always open to the First Appellate Court either to accept the application or refuse to receive the documents. If the documents are refused to be received, it can proceed with the appeal on merits on the basis of available documents. If the documents are received opportunity to adduce further evidence on the basis of the documents shall be afforded and the appeal shall be disposed of considering the additional materials received. At any costs the application shall be disposed of along with the appeal and separate order cannot be passed. Therefore, non consideration of the application while deciding the appeal is erroneous. For the limited purpose, the judgment in A.S.No.50 of 2013 dated 12.03.2014 is set aside as well as the order passed in I.A.No.15 of 2014 dated 12.03.2014 stands set aside and the matter is remitted back to the First Appellate Court for passing an order in accordance with law. First Appellate Court is directed to dispose of the appeal within a period of two months from the date of receipt of a copy of this judgment. Status Quo shall be maintained by the parties till the disposal of the appeal. Second Appeal is disposed of in the above terms. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kpr

To

1. The II Additional Subordinate Judge,
Cuddalore

2. The Principal District Munsif,
Cuddalore.

Copy To

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

+1cc to Mr.P.M.Subramaniam, Advocate, S.R.No.68556

+1cc to Mr.D.Baskar, Advocate, S.R.No.69375

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and
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SSD(CO)
RGA(26/07/2022)