



WEB COPY



S.A.No.577 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.577 of 2017
and
C.M.P.No.14388 of 2017

G.Gajapathy

... Appellant/Respondent/Plaintiff.

Vs.

M.Babu

... Respondent/ Appellant/Defendant.

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 06.07.2016 made in A.S.No.162 of 2015 on the file of the Court of XVII Additional Judge, City Civil Court, Chennai, reversing the judgement and decree dated 26.02.2015 made in O.S.No.2941 of 2012 on the file of the III Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.R.Agilesh

For Respondent : Mr.M.Jaikumar



JUDGMENT

Aggrieved by the judgment and decree passed by the XVII Additional City Civil Court, Chennai in A.S.No.162 of 2015, the respondent is the appellant before this Court.

2. The substantial question of law that arises for consideration in the above Second Appeal is *"Whether the Lower Appellate Court was correct in law in allowing the appeal despite the fact that the appellant had not appeared on the date fixed contrary to the provisions of Order 41 Rule 17 of the Code of Civil Procedure"*.

3. Considering the short point involved in the Second Appeal, I do not propose to set out the pleadings of the parties except for stating that the respondent/plaintiff had filed a suit for permanent injunction in O.S.No2941 of 2012 on the file of the III Assistant Judge, City Civil Court, Chennai restraining the defendant, his men, agents or anybody on his behalf from dealing with the constructed portion described as the "A" schedule property by sale, transfer, mortgage, lease or in any other manner, except the plaintiff, and also for a permanent injunction restraining the defendant, his men, agents or anyone claiming on his behalf from interfering with the



plaintiff's peaceful possession and enjoyment of the portion of the property described as the "B" schedule.

4. The above suit O.S.No.2941 of 2012 was decreed by a judgment and decree dated 26.02.2015. The defendant had taken up this judgment and decree in appeal before the XVII Additional City Civil Court, Chenani in A.S.No.162 of 2015. The B-Diary extract in A.S.No.162 of 2015 would show that the matter was posted for arguments on 01.03.2016. The matter was adjourned to 09.03.2016, since the Judge was on Casual Leave. On 09.03.2016, once again the matter was adjourned to 17.03.2016 on account of the Judge being on Casual Leave. On 17.03.2016, though the appellant's counsel was present, the matter was adjourned to 30.03.2016. On 30.03.2016, the appellant was not present and it was only the respondent who was present, therefore, the matter was adjourned to 15.04.2016. On 15.04.2016, though the respondent counsel was present once again the counsel for the appellant was not present and the matter was listed on 10.06.2016 as a last chance and the appellant was informed that no further adjournment would be granted. From 10.06.2016, the matter got adjourned to 21.06.2016. On 21.06.2016, both sides were not present and the matter was adjourned for appearance and for putting forth their oral/written



S.A.No.577 of 2016

arguments on or before 29.07.2016. However, on 06.07.2016, judgement was pronounced and the appeal was allowed despite the appellant being absent.

5. Considering the provisions of Order 41 Rule 16 of the Civil Procedure Code, the learned Judge ought to have dismissed the appeal. However, contrary to the above provisions, the learned Judge has allowed the appeal although both the parties and counsels have been absent. The substantial question of law is therefore answered in favour of the plaintiff/appellant and the Second Appeal is allowed, the matter is remitted back to the XVII Additional City Civil Court, Chennai for fresh disposal after hearing both parties. The above exercise shall be completed within a period of one month from the date of receipt of a copy of the order and the records (if the records have been dispatched to this Court). No costs. Consequently, the connected Civil Miscellaneous Petition is closed, if any.

12.10.2022

Index : Yes/No
Internet : Yes/No
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S.A.No.577 of 2017,

To
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- 1.The III Assistant Judge, City Civil Court, Chennai.
- 2.The XVII Additional Judge, City Civil Court, Chennai.



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P.T. ASHA, J,

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