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C.M.A.No.661 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.661 of 2021

and

C.M.P.No.4155 of 2021

1.M.Sivakumar

2.S.Santhi

... Appellants

Vs.

M.Arul

... Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and award dated 13.12.2019 passed by the learned II Additional Subordinate Judge, Salem in A.S.No.80 of 2019 reversing the judgment and decree dated 27.06.2019 passed by the learned II Additional District Munsif, Salem in O.S.No.521 of 2014 and prays to set aside the same.

For Appellant : Mr.L.Mouli

For Respondent : Mrs.Zeenath Begum



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J U D G M E N T

The defendants are the appellants herein.

2. By an order dated 13.12.2019 in A.S.No.80 of 2019, the lower Appellate Court allowed the appeal and remanded the matter back to the trial Court for fresh trial and such order of remand was unchallenged before this Court.

3. Heard the learned counsel for the appellants/defendants and the respondent/plaintiff.

4. The respondent herein filed a suit in O.S.No.521 of 2014 seeking a relief of permanent injunction. After the defendant entered appearance, he filed written statement inter-alia disputed the rights of the plaintiff; claimed that he is in possession; made counter claim and prayed for an interim injunction against the plaintiff and also sought for the declaration to declare the unregistered Will relied upon by the plaintiff is null and void.



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5. During trial, it appears that the plaintiff has not entered into the witness box and he has not adduced any oral and documentary evidence. On behalf of the defendant, the first defendant was examined as D.W.1 and third party was examined as D.W.2.

6. When the matter was reserved for orders, the learned II Additional District Munsif Court, Salem, has posted the matter 'for clarification'. At that time, the petitioner/plaintiff has filed I.A.Nos.284 of 2019 and 285 of 2019 before the trial Court to re-open and re-call the plaintiff's side evidence and the same was allowed on payment of Rs.2,000/- and Rs.1,500/- respectively and the costs has been paid on or before 03.06.2019. Since the condition order was not complied with, the trial Court has delivered the judgment in the main suit on 27.06.2019 whereby the relief of the plaintiff was dismissed and the relief sought for by the defendants in the counter claim was allowed. Aggrieved against the said judgment and decree made in O.S.No.521 of 2014, the plaintiff has preferred A.S.No.80 of 2019 before the II Additional Sub-Court, Salem.



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7. During argument in the appeal, the learned counsel appearing for the appellant/plaintiff could contend that an opportunity may be granted.

8. Per contra, the learned counsel for the respondents herein could draw the attention of the Court to the fact that I.A.Nos.284 of 2019 and 285 of 2019 were allowed on payment of costs. Since there is no revision or appeal filed by the plaintiff as against the order passed by the trial Court in I.A.Nos.284 and 285 of 2019, this appeal suit is not maintainable.

9. It is seen from the records that the learned Sub-Judge has taken a view that, since it is a regular appeal against the counter claim, the appeal is maintainable. However, further proceeded to give liberty and has allowed the appeal and remanded the matter for fresh trial before the trial Court and hence the civil miscellaneous appeal.

10. After hearing both the sides and also perusing the lower Court records, I find that the lower appellate Court has not followed the principles enumerated by the Hon'ble Supreme Court, before remanding the appeal to the trial Court. In



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the instant case, though, initially, the plaintiff was given a liberty to let in evidence, after sufficient time, as he failed to let in evidence, both oral and documentary, the plaintiff side evidence was closed and the defendants had entered the witness box and completed his evidence. Again, thereafter, the trial Court has asked him and thereafter judgment was reserved and again it was reopened for clarification. At this juncture, the plaintiff filed IA.Nos. 284 of 2019 and 285 of 2019 to reopen and recall. Even those applications were allowed on payment of costs of Rs.2000/- and Rs.1500/- respectively . Hence , I find that the plaintiff was not interested in conducting the case, instead wanted to drag on the proceedings.

11.The case of the plaintiff is purely based only upon the unregistered Will. In the written statement, the defendants relied upon a registered Will and also sought for the relief of declaration of the said unregistered Will as 'null and void'.

12. The trial Court on consideration of both oral and documentary evidence, had come to the conclusion that, the Will relied on by the plaintiff is bogus and further held that the unregistered will is null and void and such a finding is pending before the lower Appellate Court. Hence, under the above



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such circumstances, I find that the order of remand made by the lower Appellate Court is unsustainable in law. Without assigning any reason to set aside the finding, the liberty to the plaintiff, to prove the registered Will does not arise.

13. Taking note of the above circumstances of the case, I find that the order of remand made by the trial Court is liable to be set aside.

14. Accordingly, the order of remand made by the lower Appellate Court on 27.06.2019 in A.S.No.80 of 2019 is hereby set aside and it is further directed that the learned II Additional Sub Judge, Salem shall restore A.S.No.80 of 2019 on its file and to dispose of the matter in accordance with law.

15. Taking note of the circumstances of the case, the plaintiff in the suit is permitted to file necessary application under Order 41 Rule 27 of C.P.C, if he be so advised. In such an event, the lower Appellate Court shall consider the said application on the facts and merits of the case and dispose of and pass appropriate orders.



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16. In the result,

(i) This Civil Miscellaneous Appeal is allowed. Consequently, connected C.M.P is closed.

(ii) Order dated 27.06.2019 made in A.S.No.80 of 2019 by the II Additional Sub Court, Salem is set aside;

(iii) The II Additional Sub Judge, Salem is ordered to restore A.S.No.80 of 2019 on its file and dispose of the suit in accordance with law within a period of four months from the date of receipt of a copy of this order.

(iv) There shall be no order as to costs.

24.02.2023

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Index:Yes/No

Internet: Yes/No

Neutral Citation:Yes/No

To

1. The II Additional Subordinate Judge, Salem.

2. The II Additional District Munsif, Salem.

3. The Section Officer,
V.R.Section, High Court,
Madras.



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RMT.TEEKAA RAMAN,J.,

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