



A.S.No.219 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.04.2023

CORAM:

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

A.S.No.219 of 2023
and CMP.No.9162 of 2023

Durgambal

... Appellant

Vs.

1. Kumar
2. Venkatesan

...Respondents

Prayer : Appeals filed under Section 96 of CPC r/w Order 41 of CPC., to set aside the Judgment and Decree dated 06.02.2023 passed in O.S.No.23 of 2021 on the file of the III Additional District Judge, Kallakurichi.

For Appellant : Mr.R.Bharathkumar

J U D G M E N T

The appeal has been filed seeking to set aside the Judgment and Decree passed by the learned III Additional District Judge, Kallakurichi, in O.S.No.23 of 2021, dated 06.02.2023.



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2. The case of the appellant is that the 1st respondent herein is the plaintiff in the suit in O.S.No.23 of 2021 on the file of the III Additional District Court, Kallakurichi, seeking for recovery of money. The appellant is the 1st defendant in the above suit. The said suit was contested by the 1st defendant/appellant herein. On hearing both sides, the learned trial Judge had decreed the suit in favour of the plaintiff/1st respondent herein. Challenging the said findings of the trial Court, the appellant herein/1st defendant has filed this appeal.

3. The learned counsel for the appellant has submitted that before the trial Court, the plaintiff (PW1) was not cross examined for the reason that he had not appeared before the trial Court for several hearings. He further submitted that without having sufficient materials and evidence, the learned trial Judge had erroneously decreed the suit in favour of the plaintiff. However, the appellant is ready to cross examine PW1. Hence, he prays to allow this appeal.



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4. On a perusal of the records, it reveals that the suit was posted on 14.7.2022 for cross examination of PW1 and on that day, the plaintiff has not appeared and hence, the case was posted again on 21.07.2022 on which date also, the plaintiff did not appear. Thereafter, the case was posted on 28.07.2022 on which date also, there was no representation on the side of the plaintiff. Therefore, the trial Court had closed the evidence of Plaintiff's side. The trial Court ought to have given one more opportunity to the 1st defendant to cross examine the plaintiff but erroneously decreed the suit in favour of the plaintiff, which is totally perverse.

5. Hence, this Court is of the view that if the opportunity is not given to the appellant, her lawful right will be defeated. Therefore, the matter is remanded back to the trial Court for fresh consideration by providing reasonable opportunity to the appellant/1st defendant to cross-examine PW1 and to lead the defence evidence.



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6. In view of the above, this appeal is disposed of. Consequently, connected miscellaneous petition is closed. Registry is directed to refund the Court fee to the appellant as paid by him. No costs.

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To

The learned III Additional District Judge, Kallakurichi.



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T.V.THAMILSELVI, J.

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