



C.M.S.A.No.12 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.S.A.No.12 of 2019

And

C.M.P.Nos.9633 & 9635 of 2019 and 13258 & 14467 of 2020

E.Basheer Ahamad

... Appellant

Vs.

1.A.Leela

2.Seethalakshmi

3.Tamizharasi

4.Moorthy

... Respondents

Prayer:

Civil Miscellaneous Second Appeal filed under Order XXI Rule 97 (1) read with Section 100 of Civil Procedure Code seeking to set aside the judgment and decree dated 27.03.2019 passed in A.S.No.28 of 2017 on the file of the Principal District Judge, Puducherry confirming fair and decretal order dated 03.11.2017 in E.A.No.578 of 2003 in E.P.No.18 of 2003 on the file of the Additional Sub Judge, Pondicherry.

For Appellant : Mrs.Chitra Sampath
Senior Counsel

For Respondents : Mr.N.Suresh for R1
Caveetor Counsel



C.M.S.A.No.12 of 2019

J U D G M E N T

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This civil miscellaneous second appeal has been filed seeking to set aside the judgment and decree dated 27.03.2019 made in A.S.No.28 of 2017 by the learned Principal District Judge, Puducherry.

2.The learned Senior Counsel appearing for the appellant submitted that the appellant is the respondent in E.A.No.578 of 2003 in E.P.No.18 of 2003. The Trial Court allowed the E.A. filed by the first respondent against which, the appellant preferred appeal before the lower Appellate Court in A.S.No.28 of 2017 and also filed application seeking to receive the documents in I.A.No.134 of 2019, however, the said interlocutory application as well as the appeal suit were dismissed by the lower Appellate Court. Challenging the same, this civil miscellaneous second appeal has been filed.

3.The learned Senior Counsel appearing for the appellant further submitted that admittedly, the disputed property is a poromboke land and the same was granted in favour of the appellant and for violation of the condition the grant was cancelled, however, the documents pertaining to the same were not produced before the Trial Court in E.A.No.578 of 2003 and same was possessed only during the pendency



C.M.S.A.No.12 of 2019

of the appeal suit and hence filed the application seeking to receive the documents in I.A.No.134 of 2019 under Order XLI Rule 27 of C.P.C., however, the same was rejected by the lower Appellate Court, which is not sustainable one.

4.The learned Senior Counsel appearing for the appellant further submitted that the first respondent filed a suit for specific performance in O.S.No.55 of 1981 against one Govindasamy Naicker who claim to be the owner of the property and obtained decree in her favour on 27.02.1982 and the said decree was confirmed vide judgment and decree dated 13.07.1993 in A.S.No.746 of 1982, against which, L.P.A.No.255 of 1994 was preferred before this Court and this Court confirmed the decree on 23.06.1997. Thereafter, the first respondent filed E.A.No.578 of 2003 in E.P.No.18 of 2003 and added the appellant as party respondent since the appellant sought for removal of obstruction. E.A.No.578 of 2003 filed by the first respondent was decreed in her favour and hence, the appellant preferred appeal before the lower Appellate Court in A.S.No.28 of 2017 and also filed application seeking to receive the documents in I.A.No.134 of 2019, however, the said interlocutory application as well as the appeal suit were dismissed by the lower Appellate Court.



C.M.S.A.No.12 of 2019

WEB COPY

5.The learned Senior Counsel appearing for the appellant further submitted that the Government filed E.A.No.664 of 2003 in E.P.No.18 of 2003 seeking to conduct the enquiry regarding question of title to be determined by the Court executing the decree fro proper adjudication of title, however, E.A.No.664 of 2003 was rejected on 03.11.2017 and the Government did not prefer any appeal against the said order.

6.The learned Senior Counsel appearing for the appellant further submitted that the valuable rights possessed by the appellant was rejected by the lower Appellate Court is not justifiable one. Hence, this court may issue direction to the lower Appellate Court to receive the documents produced by the appellant under Order XLI Rule 27 of C.P.C.

7.The learned counsel appearing for the first respondent vehemently opposed for this Court considering the request now made by the learned counsel appearing for the appellant. The learned counsel submitted that the very same documents produced by the appellant before this Court in C.M.P.Nos.13258 and 14467 of 2020



C.M.S.A.No.12 of 2019

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were produced by the Government itself in E.A.No.664 of 2003 in E.P.No.18 of 2003 and the same was rejected by the Trial Court, against which, the Government did not prefer any appeal. The very same issue cannot be re-adjudicated before this Court and lower Appellate Court as the same is impermissible.

8.Heard the learned Senior Counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

9.Considering the facts and circumstances of the case, this Court refrains itself from rendering any opinion on the merits of the case since rendering any opinion may adversely affect the interest of the parties.

10.The main grievance of the appellant is that the appellant filed interlocutory application under Order XLI Rule 27 of C.P.C. in I.A.No.134 of 2019 in A.S.No.28 of 2017 before the lower Appellate Court, however, the lower Appellate Court refused to receive the documents. In the opinion of this Court, mere receiving of additional



C.M.S.A.No.12 of 2019

documents will not deprive the rights of the first respondent. Hence, the lower Appellate Court can entertain the documents filed by the appellant in I.A.No.134 of 2019 in A.S.No.28 of 2017 as additional documents. Such power is available for the lower Appellate Court. Without exercising such power, simply rejecting I.A.No.134 of 2019 along with appeal suit is not sustainable one. On the sole ground, this Court inclined to set aside the judgment and decree dated 27.03.2019 passed in A.S.No.28 of 2017 by the learned Principal District Judge, Puducherry.

11. Accordingly, the judgment and decree dated 27.03.2019 passed in A.S.No.28 of 2017 by the learned Principal District Judge, Puducherry, is set aside and the matter is remanded back to the learned Principal District Judge, Puducherry, for fresh consideration. The appellant is directed to produce, all the documents filed before this Court in C.M.P.Nos.13258 and 14467 of 2020 in C.M.S.A.No.12 of 2019 and the documents produced before the lower Appellate Court in I.A.No.134 of 2019 in A.S.No.28 of 2017, before the lower Appellate Court/ Principal District Court, Puducherry, through oral evidence. Upon receipt of the same, the learned Principal District Judge, Puducherry, shall consider the same and dispose of the appeal suit,



C.M.S.A.No.12 of 2019

within a period of five months from the date of receipt of a copy of this judgment.

12.Since this Court remand the matter back to the lower Appellate Court, this Court is not inclined to consider the relief sought for in C.M.P.Nos.13258 and 14467 of 2020. Registry is directed to return all the documents filed in C.M.P.Nos.13258 and 14467 of 2020 in C.M.S.A.No.12 of 2019 to the learned counsel appearing for the appellant so as to enable the appellant to produce the same before the lower Appellate Court.

13.This civil miscellaneous second appeal is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

07.12.2023

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Note: Registry is directed to return all the documents filed in C.M.P.Nos.13258 and 14467 of 2020 in C.M.S.A.No.12 of 2019 to the learned counsel appearing for the appellant.

Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No



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C.M.S.A.No.12 of 2019

M.DHANDAPANI,J.
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To

- 1.The Principal District Judge,
Puducherry.
- 2.The Additional Sub Judge,
Pondicherry.

C.M.S.A.No.12 of 2019
And
C.M.P.Nos.9633 & 9635 of 2019
and 13258 & 14467 of 2020

07.12.2023