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A.S.Nos.685, 707 and 708 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

A.S.Nos.685, 707 and 708 of 2017
and
C.M.P.Nos.21716, 22572 and 22573 of 2017

A.S.No.685 of 2017:

Sampath

...Appellant

Vs.

1.Abinaya

2.Dhanalakshmi

3.S.K.Paneer Raja

4.P.K.Karuppan

...Respondents

Prayer: Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree in O.S.No.28 of 2008 on the file of the Additional District Court, Namakkal, dated 28.04.2017.

For Appellant : Mr.S.R.Varun Karthik

For Respondents : Mr.T.Dhanyakumar for R1

Mr.C.Jagadish for R2 and R4

Mr.M.K.Muruganantham for R3



A.S.Nos.685, 707 and 708 of 2017 /

A.S.No.707 of 2017:

S.K.Panneer Raja

...Appellant

Vs.

1.Abinaya

2.Sampath

3.Dhanalakshmi

3.P.K.Karuppan

...Respondents

Prayer: Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 28.04.2017 in O.S.No.28 of 2008 on the file of the Additional District Court, Namakkal.

For Appellant : Mr.C.Jagadish

For Respondents : Mr.T.Dhanyakumar for R1

Mr.S.R.Varun Karthik for R2

Mr.M.K.Muruganantham for R3 and R4

A.S.No.708 of 2017:

1.Dhanalakshmi

2.P.K.Karuppan

...Appellants

Vs.

1.Abinaya

2.Sampath

3.S.K.Panneer Raja

...Respondents



Prayer: Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 28.04.2017 in O.S.No.28 of 2008 on the file of the Additional District Court, Namakkal.

For Appellants : Mr.C.Jagadish

For Respondents : Mr.T.Dhanyakumar for R1

Mr.S.R.Varun Karthik for R2

Mr.M.K.Muruganantham for R3

J U D G M E N T

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

These three appeals arise out of the judgment of the Additional District Court, Namakkal made in O.S.No.28 of 2008, wherein, the learned District Judge had, purportedly, in exercise of power under Order X Rule 4 of the Code decreed the suit without considering the evidence already on record and without answering the issues that were framed for trial.

2. The suit for partition was laid by the 1st respondent contending that the suit properties were ancestral properties and as a daughter of the 1st defendant she is entitled to a share. The said suit was resisted by the father who figured as 1st defendant as well as the purchasers from the father. It



appears from the records that the plaintiff's evidence was completed. DW1 was also examined and DW2 was in the box. There was some delay in cross-examination of DW2, since, the witness did not appear and on some days, the witness was present and the suit was adjourned on application. The fact that this Court had issued certain directions for disposal of the suit within three months impelled the learned District Judge to take the shortcut by resorting to Order X Rule 4 of the Code of Civil Procedure to decree the suit. This kind of disposal is very unfortunate. Order X Rule 4 of the Code of Civil Procedure would not apply, on the given facts. The provisions of Order X are meant for empowering the Court to examine a party by the Court at the first hearing of the suit. Order X Rule 2 reads as follows:-

2. Oral examination of party, or companion of party.-- (1) At the first hearing of the suit, the Court--

(a) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit, by whom any party appearing in person or present in Court or his pleader is



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accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.

Order X Rule 4 reads as follows:-

4. Consequence of refusal or inability of pleader to answer.--

(1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court [may postpone the hearing of the suit to a day not later than seven days from the date of first hearing] and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may



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pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

3. While order X Rule 2 vests the power in the Court to examine a party or a companion of the party at the first hearing of the suit, the consequence of refusal or inability to answer the questions during such examination conducted under Order X Rule 2 of the Code of Civil Procedure is set out in Order X Rule 4 of the Code of Civil Procedure. Therefore, the consequence under Order X Rule 4 will flow only from an action that is taken under Order X Rule 2 viz., examination of a party at the first hearing and not otherwise. The exercise of power by the learned Additional District Judge under Order X Rule 4 during trial is, to our mind, completely erroneous.

4. Hence, the judgment under appeals is set aside and the appeals are allowed. Since the trial Court has not considered the other issues, it has become necessary for us to remit the matter to the Additional District Court, Namakkal to continue the trial from where it was stopped and dispose of the suit.



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5. The Registry is directed to send back the records forthwith and the parties are directed to appear before the Additional District Court, Namakkal on 4th December 2023. The trial Court shall proceed with the suit from the stage of cross-examination of DW2 and complete the hearing of the suit and dispose of the suit within a period of three (3) months from 04.12.2023. In view of the fact that the appeal succeeds due to the mistake committed by the learned District Judge, we direct the parties to bear their own costs.

(R.S.M.,J.) (N.S.,J.)
30.10.2023

dsa
Index :Yes
Internet :Yes
Neutral Citation :Yes
Speaking order

To

The Additional District Judge,
Namakkal.



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and
N.SENTHILKUMAR, J.

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