



S.A.(MD)No.38 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.03.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.38 of 2017

V.Murugan

... Appellant

/Vs./

Athima Munivar Samudhaya Trust,
East Street, Nagercoil
Agasteeswaram Taluk, Kanyakumari District,
Represented by its Trustees,

1.P.Annadurai

2.S.Govindhaswamy

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree passed in A.S.No.46 of 2014, on the file of the Principal Sub Court, Nagercoil, dated 23.09.2016 reversing the judgment and decree passed in O.S.No.467 of 2010 on the file of the Principal District Munsif Court, Nagercoil, dated 18.02.2014.



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For Appellant : Mr.V.Muthukamatchi,
For M/s.K.Suyambulingabharathi
For Respondent : Mr.V.Meenakshi Sundaram

JUDGMENT

This Second Appeal has been filed challenging the Judgment and Decree of the lower appellate Court dated 23.09.2016 passed by the Principal Sub Court, Nagercoil, Kanyakumari District in A.S.No.46 of 2014.

2. The appellant is the defendant in the suit. The suit was filed by the respondent Trust in O.S.No.467 of 2010 on the file of the Principal District Munsif Court, Nagercoil, seeking for recovery of possession and for permanent injunction and for recovery of future mesne profits. The respondent / plaintiff claimed that the appellant / defendant is their tenant, who did not pay arrears of rent and also claimed that the appellant / defendant is attempting to alter the superstructure in the suit schedule property. The same was disputed by the appellant / defendant before the



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trial Court as seen from his written statement. The trial Court, by its judgment and decree dated 18.02.2014 passed in O.S.No.467 of 2010 dismissed the suit filed by the respondent / plaintiff on the ground that they have not been able to establish through oral and documentary evidence that they have put up the construction, which is being occupied by the appellant / defendant.

3. Aggrieved by the judgment and decree dated 18.02.2014 passed by the Principal District Munsif, Nagercoil, in O.S.No.467 of 2010, the respondent / plaintiff filed the first appeal before the Principal Sub Court, Nagercoil in A.S.No.46 of 2014. The lower appellate Court partly allowed the appeal filed by the respondent / plaintiff by granting the relief of permanent injunction as prayed for in the suit, namely to restrain the appellant / defendant from altering the superstructure in the suit schedule property. However, the lower appellate Court with regard to the recovery of possession relief sought for by the respondent / plaintiff, the parties were relegated to the Rent Control Court and they were directed to seek the relief with regard to recovery of possession before the Rent Control Court.



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4. Before the lower appellate Court, the respondent / plaintiff filed an application under Order 41 Rule 27 of C.P.C., seeking permission of the lower appellate Court to receive the additional documents to substantiate their claim that the appellant / defendant had put up the construction over the suit schedule property and the said construction also belongs to them absolutely. The lower appellate Court has also taken into consideration the said contention and the documents filed along with the same and only thereafter, has come to the conclusion that the respondent / plaintiff is entitled for the relief of permanent injunction.

5. Admittedly, the appellant / defendant was not given a chance to cross examine the respondent / plaintiff's witness with regard to the additional documents filed by the respondent / plaintiff before the lower appellate Court through an application filed under Order 41 Rule 27 of C.P.C. Necessarily, the appellant / defendant ought to have been granted an opportunity to rebut the evidence placed by the respondent / plaintiff before the lower appellate Court by allowing him to cross examine the respondent / plaintiff's witness with regard to the same. Having not been



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allowed to rebut the additional evidence let in by the respondent / plaintiff before the lower appellate Court, this Court is of the considered view that the matter has to be remanded back to the trial Court for fresh consideration on merits and in accordance with law, after affording both the parties with an equal opportunity to rebut the contentions through oral and documentary evidence.

6. Even though this Court had admitted the Second Appeal on 16.02.2017, the following substantial question of law, which is very crucial for the effective determination of the dispute between the parties has not been included, namely, Whether the lower appellate Court was right in partly allowing the appeal filed by the respondent / plaintiff without giving an opportunity for the appellant / defendant to rebut the additional evidence placed on record by the respondent / plaintiff by filing an application under Order 41 Rule 27 of C.P.C., and without affording an opportunity of cross examining the respondent / plaintiff's witness with regard to the same?



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7. In view of the aforesaid substantial question of law formulated by this Court today, necessarily, the matter will have to be remanded back to the trial Court for fresh consideration on merits and in accordance with law and the impugned Judgments and Decree of Courts below have to be set aside. Accordingly, the impugned Judgment and Decree of the lower appellate Court dated 23.09.2016 passed in A.S.No.46 of 2014 on the file of the Principal Sub Court, Nagercoil, Kanyakumari District and the Judgment and Decree passed in O.S.No.467 of 2010 on the file of the Principal District Munsif Court, Nagercoil, dated 18.02.2014 are hereby set aside and the matter is remanded back to the trial Court, namely, the Principal District Munsif Court, Nagercoil, Kanyakumari District in O.S.No.467 of 2010 for fresh consideration on merits and in accordance with law.

8. Both the parties are directed to appear before the trial Court, namely, the Principal District Munsif Court, Nagercoil, Kanyakumari District in O.S.No.467 of 2010 on **17.04.2023** without fail and thereafter, the trial Court, namely the Principal District Munsif Court, Nagercoil, Kanyakumari District, after framing the additional issues shall proceed with the matter



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in accordance with law and pass a final Judgment and Decree within a period of six months thereafter. This Second Appeal is allowed accordingly. There shall be no order as to costs.

21.03.2023

Index : Yes / No
NCC : Yes / No
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TO:

- 1.The Principal Sub Court, Nagercoil.
- 2.The Principal District Munsif Court, Nagercoil.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.38 of 2017

Dated:
21.03.2023