



S.A.No.1869 of 2001

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.04.2023

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

S.A.No.1869 of 2001

1.Perumal (died) ... Appellant/Respondent/Defendant
2.Thangasamy
3.Ramaiah
4.Natarajan
5.Vettun Perumal
6.Paramasivan

**(Appellants 2 to 6 are brought on record as
Legal Heirs of the deceased sole appellant vide
order dated 21.07.2010 in M.P(MD)Nos.1 to 3 of 2009.)**

... Appellants

-VS-

1.Ayyadurai (died) ..Respondent/Appellant/Plaintiff
2.Indira
3.Kovil Ponraj

**(R2 & R3 are brought on record as Legal Heirs of
the deceased sole respondent vide
court order dated 24.01.2020 made in
CMP(MD)Nos.11202 & 11203 of 2018)**

..Respondents



S.A.No.1869 of 2001

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree made in A.S.No.5 of 2001 on the file of the Principal Sub-Judge, Tirunelveli dated 10.09.2001 reversing the Judgment and Decree in O.S.No.375 of 1998 on the file of the Principal District Munsif, Tirunelveli dated 08.01.2001.

For Appellants ... Mr.S.Meenakshisundaram
Senior Counsel for
Mr.N.GA.Natraj

For Respondents ... Mr.Ananth C.Rajesh

JUDGMENT

This Second Appeal is filed to set aside the Judgment and Decree made in A.S.No.5 of 2001, on the file of the Principal Sub-Judge, Tirunelveli, dated 10.09.2001 reversing the Judgment and Decree in O.S.No.375 of 1998, on the file of the Principal District Munsif, Tirunelveli, dated 08.01.2001.

2.The fact remains that the documents were not marked before the trial Court, which were marked only before the appellate Court. Admittedly, the documents were not marked by consent of both the parties. If that being the case, the lower appellate Court, while exercising the power, should have recorded the evidence by giving



S.A.No.1869 of 2001

WEB COPY

opportunity to both the parties and marked documents and or otherwise could have delegated the power to the trial Court to receive the documents regarding the evidence and thereafter, the trial Court should have sent it back the evidence and marked documents to the lower appellate Court. The lower appellate Court, after considering the evidence and documents, would have given a finding. The appellate Court failed to do that. It is apparent that the appellate Court has not followed Order 41 Rule 27 and 28 of the Code of Civil Procedure. Whenever a statute requires to be done in a particular manner and when such act has to be done in that manner only and in no other manner. Therefore, the opportunity for taking evidence definitely must be given to both the parties and the documents also should be marked in the manner known to law. In case of marking documents, opportunity must be given to both the parties to adduce evidence on the same and for cross-examination, opportunity must be given to the opposite party. In this case, this has not been done. Therefore, the Judgments reported in **(2022)1 MLJ 282 (M.A.C. Ayesha Ummal vs. M.L. Mohamed Hasan)** and **2023(1) CTC 30 (S.Shanmuga Sundaram vs. S.Mohan)**, which are relied on by the learned counsel for the appellants, are squarely applicable to the present case also.



S.A.No.1869 of 2001

WEB COPY

3. Accordingly, the Second Appeal is allowed by setting aside the Judgment and Decree in A.S.No.5 of 2001, dated 10.09.2001, on the file of the Principal Sub-Judge, Tirunelveli and the matter is remanded back to the lower appellate Court to decide the matter afresh. The lower appellate Court is directed to take up the matter and decide the matter on merits by giving opportunity to both the parties to adduce additional evidence and marking documents through the witnesses and giving opportunity to the parties for cross-examination.

4. Registry is directed to send back the records to the lower appellate court within ten days from the date of receipt of a copy of this order. Both the parties are directed to appear before the first appellate Court on 6th of June 2023. The lower appellate Court is directed to decide the matter afresh as stated supra, in accordance with law, on or before 31.08.2023. No costs.

05.04.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

skn

Note : Issue Order Copy on 11.04.2023.



S.A.No.1869 of 2001

WEB COPY

To:

- 1.The Principal Sub Judge, Tirunelveli.
- 2.The Principal District Munsif, Tirunelveli.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.No.1869 of 2001

P.VELMURUGAN, J.

skn

S.A.No.1869 of 2001

05.04.2023