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C.M.P.No.2256 of 2022
in
S.A.No.236 of 2012

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N.SENTHILKUMAR, J.

This petition has been filed to permit the petitioner to raise the additional substantial questions of law in the above second appeal.

2. Additional Substantial Questions of Law are as follows:

- a) *Whether the Lower Appellate Court is erred in law in marking Ex.A-17 to A-23 on the side of the plaintiff without any oral evidence thereby depriving right to cross examination of the plaintiff witnesses?*
- b) *Whether the Lower Appellate Court had committed a jurisdictional error in allowing the petition for additional evidence and marking the documents without following procedures established by law?*

3. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in ***(2018) 8 MLJ 208 (SC) in the case of Corporation of Madras and Another Vs. M.Parthasarathy and Others***, wherein the Hon'ble Supreme Court held as follows:



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“14. In our considered opinion, the first appellate court committed two jurisdictional errors in allowing the appeals.

15. First, it took into consideration the additional piece of evidence while deciding the appeals on merits without affording any opportunity to the appellants herein (who were respondents in the first appeals) to file any rebuttal evidence to counter the additional evidence adduced by the respondents (appellants before the first appellate court). This caused prejudice to the appellants herein because they suffered the adverse order from the appellate court on the basis of additional evidence adduced by the respondents for the first time in appeal against them. (See LAO v. H. Narayanaiah [LAO v. H. Narayanaiah, (1976) 4 SCC 9] , Shalimar Chemical Works Ltd. v. Surendra Oil & Dal Mills [Shalimar Chemical Works Ltd. v. Surendra Oil & Dal Mills, (2010) 8 SCC 423 : (2010) 3 SCC (Civ) 392] and Akhilesh Singh v. Lal Babu Singh [Akhilesh Singh v. Lal Babu Singh, (2018) 4 SCC 659 : (2018) 3 SCC (Civ) 131] .)

16. Second error was of a procedure which the first appellate court failed to resort in disposing of the appeals. This also involved a question of jurisdiction.

17. Having allowed the CMP No. 1559 of 1993 and, in our opinion rightly, the first appellate court had two



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options, first it could have either set aside the entire judgment/decree of the trial court by taking recourse to the provisions of Order 41 Rule 23-A of the Code and remanded the case to the trial court for retrial in the suits so as to enable the parties to adduce oral evidence to prove the additional evidence in accordance with law or second, it had an option to invoke powers under Order 41 Rule 25 of the Code by retaining the appeals to itself and remitting the case to the trial court for limited trial on particular issues arising in the case in the light of additional evidence which was taken on record and invite findings of the trial court on such limited issues to enable the first appellate court to decide the appeals on merits.

18. The first appellate court failed to take note of both the abovementioned provisions and proceeded to allow it wrongly.

19. Due to these two jurisdictional errors committed by the first appellate court causing prejudice to the appellants herein while opposing the first appeals, the judgment rendered by the first appellate court, in our opinion, cannot be sustained legally on merits.

20. The High Court also while deciding the second appeals failed to notice these two jurisdictional legal errors which went to the root of the case. It is for this



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reason, the impugned order also cannot be legally sustained calling interference by this Court.

N.SENTHILKUMAR, J.

21. In the light of the foregoing discussion and having regard to the totality of the facts of the case and to enable the parties to have full and fair trial, we consider it proper to take recourse to the powers under Order 41 Rule 23-A of the Code and accordingly set aside the judgment and decree of the first appellate court to the extent it allows the respondents' appeals on merit but at the same time uphold that part of the order which has allowed CMP No. 1559 of 1993 filed by the plaintiffs for adducing additional evidence and remand the cases to the trial court for retrial of all the four civil suits on merits afresh.”

4. Learned counsel for the respondent has no objections.
5. In view of the above, the civil miscellaneous petition is **ordered**.
6. Registry is directed to include the additional substantial questions of law in S.A.No.236 of 2012 and **post the second appeal for final hearing on 12.09.2024.**

04.09.2024



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