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S.A.Nos.270 of 2008 & 693 of 1999

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.Nos.270 of 2008 & 693 of 1999

and

M.P.No.1 of 2008

In S.A.No.270 of 2008:

1.S.Manohar Chand
2.S.Mohan Chand
3.G.Santhilal

... Appellants

vs.

1.Arockiaraj
2.Jayapalan

... Respondents

In S.A.No.693 of 1999:

1.Arockiaraj
2.Jayapalan
3.Pauline

... Appellants

vs.

1.Manoharchand
2.Mohan
3.Santhilal

...Respondents

Prayer in S.A.No.270 of 2008:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated



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19.09.2006 in A.S.No.14 of 2006 passed by the learned Sub Judge, Panruti, confirming the judgment and decree dated 30.08.2005 in O.S.No.76 of 1998 passed by the learned District Munsif, Panruti.

Prayer in S.A.No.693 of 1999:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 11.01.1999 in A.S.No.2 of 1998 passed by the learned Sub Judge, Panruti, reversing the judgment and decree dated 11.11.1997 in O.S.No.923 of 1993 passed by the learned District Munsif, Panruti.

For appellants in

S.A.No.693 of 1999 : Mr.T.Dhanyakumar

For respondents in

S.A.No.693 of 1999 : No appearance

For appellants in

S.A.No.270 of 2008 : Ms.Abirami

For respondents in

S.A.No.270 of 2008 : Mr.T.Dhanyakumar

COMMON JUDGMENT

The Second Appeal in S.A.No.270 of 2008 arises out of a suit in O.S.No.76 of 1998 for the relief of declaration and recovery of possession. The other connected second appeal in S.A.No.693 of 1999



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arises out of a suit in O.S.No.923 of 1993 which was filed by the same plaintiffs in O.S.No.76 of 1998, claiming damages.

2. Since the parties and the suit properties involved are one and the same, these two Second Appeals are considered and decided by this common judgment.

3. In S.A.No.270 of 2008, the learned counsel for the appellants would submit that in spite of her best efforts, she is not in a position to get instructions from her clients. Hence, she reported “no instructions”.

4. In view of the above, the Second Appeal in **S.A.No.270 of 2008 is dismissed for default**. Consequently, connected miscellaneous petition is closed. The counsel for the appellants is requested to inform this order to the appellants. There shall be no order as to costs.



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5. In view of the dismissal of the Second Appeal in S.A.No.270 of 2008, the another Second Appeal in **S.A.No.693 of 1999** is decided as follows:

- i. In the suit in O.S.No.76 of 1998, the plaintiffs therein, who are the respondents herein, have sought for the relief of declaration and recovery of possession. Though the Trial Court as well as the First Appellate Court, has granted the relief of declaration in respect of the suit property, the relief of recovery of possession was negated and found that there was no proof that these appellants, who are the defendants therein, were in possession and enjoyment of the suit property.
- ii. In view of the dismissal of the Second Appeal in S.A.No.270 of 2008 today, the finding in respect of the absence of proof of the appellants herein (defendants in O.S.No.76 of 1998) in the suit property reaches finality. With that background, if this Court looks at the facts, the suit in O.S.No.923 of 1993 was filed on the sole



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ground that the appellants herein were in possession and enjoyment of the suit property and therefore, they are bound to pay damages to the respondents herein. Though the Trial Court has dismissed the said plea, the First Appellate Court has reversed the finding and directed the appellants herein to pay damages to the respondents herein.

6. As already discussed, when the suit properties are not in the possession of the appellants herein, the award of damages to the respondents herein does not arise at all.

7. Therefore, in view of the judgment passed in S.A.No.270 of 2008, the judgment of the First Appellate Court directing the appellants herein to pay damages to the respondents herein is liable to be interfered with.

8. Hence, the Second Appeal in **S.A.No.693 of 1999 is allowed** by setting aside the judgment and decree passed by the First Appellate Court in A.S.No.2 of 1998 by confirming the judgment and decree



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passed by the Trial Court in O.S.No.923 of 1993. Connected miscellaneous petition, if any, is closed. There shall be no order as to costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The Sub Judge, Panruti.
2. The District Munsif, Panruti.
3. The Section Officer, V.R.Section, High Court, Madras.



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C.KUMARAPPAN,J.

apd

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