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S.A.No.75 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.75 of 2019

V.Poonusamy

... Appellant/Plaintiff

-Versus-

1.Vasanth

2.Kanniyammal

3.Mythili

4.Sudha

5.V.Srinivasan

... Respondents/Defendants

Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree of the learned Subordinate Judge, Arakkonam dated 13.08.2018 made in A.S.No.50 of 2015 confirming the judgment and decree of the learned District Munsif, Arakkonam dated 27.07.2015 made in O.S.No.112 of 2010.

For Appellant : Mr.G.Jeremiah

For Respondents : Mr.D.Dayalan

JUDGEMENT

This second appeal can be disposed of on a very short ground. The suit had been presented in O.S.No.112 of 2010 on the file of the learned District



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Munsif at Arakkonam seeking partition of half share, and for separate possession, and also for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suit came to be dismissed and the plaintiff presented a regular appeal in A.S.No.50 of 2015 before the learned Subordinate judge at Arakonnam. The said appeal came to be dismissed on 13.08.2018, against which the present second appeal.

2. The parties will be referred to as per their ranks in the suit.
3. The second appeal was admitted on the following substantial questions of law:

“1. Whether the judgment and decree of the Courts below is legal sustainable in the light of judgment of the Hon'ble Supreme Court reported in 2010 (5) CTC 719 and 2011 (12) SCC 174?

2. Whether the Judgments of the Lower Appellate Court is correct in law in a light of judgment of the Hon'ble Supreme Court reported in 2018 (3) CTC 883?

3. Whether the construction placed on appellate court in respect of Ex.A7 & B1 is correct in law?

4. Whether the Lower Appellate court is correct in law in having admitted Ex.B1 in evidence at appellate stage without having marked the document through a



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witness?”

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4. Mr.G.Jeremiah would elaborate on question of law No.4 that the document that had been received on behalf of the plaintiff as well as the defendants in the appellate stage and marked as Ex.A7 and Ex.B1, on the basis of which the appeal came to be dismissed, was received by the lower appellate court without an application under Order XLI Rule 27. He would further submit that the procedure under Order XLI Rule 28 has not been followed.

5. The learned counsel for the respondents would also state that no such application came to be filed in the appeal and the document had been received straight away. The procedure followed by the lower appellate court is erroneous.

6. I could have heard the matter on merits. However, the learned Judge has relied upon the additional evidence which has been presented in the appeal without admitting the same by way of an application under Order XLI Rule 27. A reading of the judgment shows that both Ex.A7 and Ex.B1 had been heavily relied upon by the lower appellate court to come to the conclusion that the plaintiff is not entitled to a decree.



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7. On account of the procedural infraction, I am constrained to set aside the judgment of the lower appellate court alone. The fourth substantial question of law is answered in favour of the appellant. The judgment and decree passed in A.S.No.50 of 2015 on the file of the learned Subordinate Judge, Arakkonam on 13.08.2018 is set aside. The appeal shall stand restored on to the file of the learned Subordinate Judge at Arakonam.

8. Both the Appellant as well as the respondents agreed that they would appear before the learned Subordinate Judge at Arakkonam on 15.07.2024. The learned appellate judge is requested to follow the procedure under Order XLI Rule 27 and Order XLI Rule 28, if found necessary in the circumstances of the appeal.

9. With the above directions, this second appeal stands allowed. There shall be no order as to costs.

27.06.2024

Note: Records to be send back immediately to the Subordinate Judge at Arakkonam.

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Index : yes / no
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Neutral Citation : yes / no
Speaking / Non Speaking Order

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To

- 1.The Subordinate Judge, Arakkonam
- 2.The District Munsif, Arakkonam



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V.LAKSHMINARAYANAN, J.

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