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S.A. No. 460 of 2023
and C.M.P. No.21170 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-12-2024

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

**S.A.No. 460 of 2023
and
C.M.P.No.21170 of 2023**

HAJI NAZIRUDDIN (DECEASED)
REP. BY HIS LR.s.
RAFIA BEGUM
AND 2 OTHERS

APPELLANT(S)

Vs

NAGAMANI (DIED)
REP. BY HIS LR.s.
FROM 3RD TO 6TH RESPONDENTS
AND 6 OTHERS

RESPONDENT(S)

For Appellant(s):

Mr.P.BHASKARAN

For Respondent(s):

Ms.ASWINI DEVI K
STANDING COUNSEL
FOR CORPORATION
NO APPEARANCE FOR RR3 TO 6



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ORDER

Heard and considered the submissions of learned counsel for appellants as well as Ms.K.Aswini Devi, learned Standing Counsel for Corporation and perused the materials available on record.

2. The appellants, who are legal heirs of the plaintiff and their father filed the suit in O.S.No. 782 of 2005, challenging the concurrent findings of first appellate court, have preferred this Second Appeal. The learned counsel for appellant would submit that respondents 3 to 6 are trespassers, but the courts below failed to appreciate the evidence adduced on their side and failed to take note of the fact that the 1st defendant claiming right in the suit property was not examined. Accordingly, they prayed to set aside the findings of the courts below by raising the following grounds :-

- (a) The first appellate court ought not to have rendered/confirmed the finding that the 1st defendant is in possession of the suit property for more than 100 years without any oral or documentary evidence,



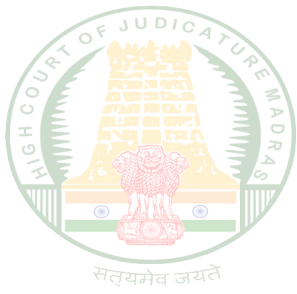
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which is only on presumption, assumption, conjecture and surmise, which is liable to be set aside.

- (b) The first appellate court ought to have allowed the additional evidence filed under Order 41 Rule 27(1) C.P.C. in I.A.No.5 of 2022, once it had been allowed the falsehood and the illegality of the alleged possession of the first defendant/respondent would have been established.
- (c) The appellate court ought to have seen that the 1st defendant having admitted the construction in the suit property, which had been confirmed by the 2nd defendant corporation i.e. the competent authority to be an unauthorised one and in the absence of rebuttal thereof. The status of such construction held to have been proved by the plaintiff.
- (d) The first appellate court ought to have seen the fact that plaintiffs are in possession of valid title documents and records pertaining to the suit property yet having been trespassed, it is under the illegal possession of the 1st defendant, the remission of the suit alone would



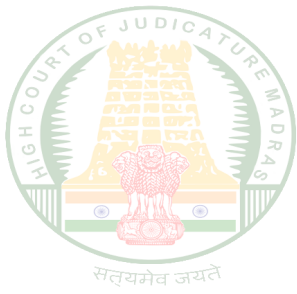
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facilitate the adjudication of title/ownership in the interest of justice, the I.A.No. 5 of 2022 for adducing additional evidence ought to have been allowed.

- (e) The first appellate court erred in not considering the fact that the additional documents are capable of likely to widely affect the decision of the trial court should not have rejected the I.A.No.5 of 2022.
- (f) The first appellate court ought to have seen the fact that the trial court opines that there is a dearth in evidence to decide the title and I.A.No.5 of 2022 should not have been hastily rejected without considering that is there a requirement of some documentary evidence to enable the first appellate court to pronounce the decree/judgment in a more satisfactory manner should not have dismissed the I.A.No.5 of 2022 only on a evasive denial of the 1st defendant.
- (g) The first appellate court ought to have seen the fact that possession is factual and be proved by evidence and without any evidence should not have held that the 1st defendant is in possession without rendering



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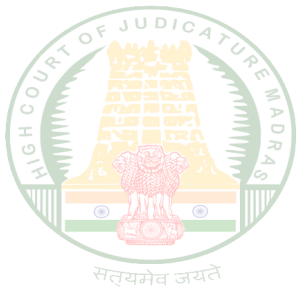
a crucial finding whether such possession is on his own legal right.

(h) The first appellate court ought to have seen the fact that the registered settlement deed bearing No.751 of 1944 dated 17.08.1944 is the basic document of title and the dispute/doubt regarding the title over the suit property would have been rectified, if it had been allowed, and the court should not have erred that the additional documents would not enable the court to deliver justice.

3. Considering the facts and circumstances as well as considering his submissions, this Second Appeal is admitted on the following substantial question of law:-

“(1) Whether the rejection of the registered settlement deed bearing No.751 of 1944 dated 17.08.1944, one of the additional evidence sought to be adduced, ignoring the legal presumption as it is being more than 30 years old as contemplated under Sec.90 of the Indian Evidence Act, 1872 is justifiable?

(2) The first to third appellants got impleaded in the



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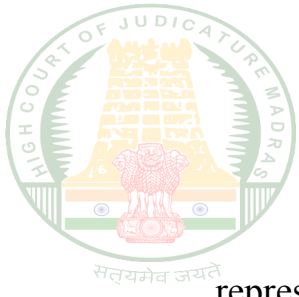
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appeal had no knowledge about the additional evidence, as not being party in the original suit, the dismissal of the I.A.No.5 of 2022 is sustainable as per Order 41 Rule 27(1) (aa) C.P.C.?

(3) Whether the first appellate court is right in dismissing the I.A.No.5 of 2022 while most of the additional evidence sought to be adduced are being judicial decrees and judgments declaring the ownership, legal right and title, which have a crucial bearing on the merits of the claim as they are being conclusive proof?

(4) Whether the first appellate court is right in ignoring to consider the admitted fact as the unauthorised construction admitted to have been made by the 1st defendant having been confirmed by the 2nd defendant i.e. the Corporation of Madras and with the 1st defendant's omission to get into box such admission stands proved?

4. Service completed. Despite service of notice, there is no



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representation on the side of respondents 3 to 6.

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5. Registry is directed to take immediate steps to call for records either from the trial court or from the first appellate court and place before this court by next hearing date.

6. Post the matter on 16.12.2024 for final arguments.

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T.V.THAMILSELVI, J.

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