

Saroja and Others Vs. S. Balakrishnan

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Court : Chennai

Decided On : Aug-16-2016

Judge : K. Ravichandrabaabu

Appeal No. : S.A. No. 544 of 2015

Appellant : Saroja and Others

Respondent : S. Balakrishnan

Judgement :

(Prayer: Second Appeal filed under Section 100 of C.P.C. against the Judgment and Decree dated 15.12.2008 made in A.S.No.9 of 2008 on the file of the Subordinate Court, Ponneri reversing the Judgment and decree dated 20.11.2007 made in O.S.No.307 of 2000 on the file of the District Munsif Court, Ponneri.)

1. This Second Appeal is filed challenging the judgment and decree of the Sub Court, Ponneri in A.S.No.9 of 2008, dated 15.12.2008 reversing the judgment and decree of the District Munsif Court, Ponneri in O.S.No.307 of 2000, dated 20.11.2007.

2. This Court on 6.8.2016 ordered notice to the respondent also by permitting private notice. Consequent upon service of such notice, the respondent entered appearance through his counsel. When the matter was listed before this Court on 10.6.2016 under the caption "Notice of motion", the learned counsel for the respondent submitted that the present Second Appeal is filed as an abuse of

process of this Court, as the very same appellants have also filed another Second Appeal arising out of the very same judgment and decree of the lower Appellate Court, in S.A.S.R.No.17855 of 2015 with the delay of 997 days and that the application filed seeking to condone such delay of 997 days came to be dismissed on 4.3.2014 after hearing both sides. Thus, he contended that after dismissal of the said application, the appellants have managed to move the present Second Appeal once again with different set of copies of the judgment and decree of the Courts below in suppression of the earlier order passed by this Court.

3. Considering the above said submission and on being satisfied that the present Second Appeal though filed earlier, has been pursued even after the disposal of the other proceedings arising out of the very same judgment and decree of the lower Appellate Court, this Court initiated suo motu contempt proceedings and issued notice to the appellants. Accordingly, suo motu Cont.P.No.1702 of 2016 is also posted today before this Court along with the present Second Appeal.

4. The learned counsel for the appellants in the present Second Appeal has filed an affidavit, dated 12.8.2016 explaining the circumstances under which the present Second Appeal was filed. The respective contentions of the parties in so far as the circumstances under which the present Second Appeal came to be filed will have to be dealt with in the contempt proceedings. However, the admitted position by all the parties is that the present Second Appeal though filed in earlier point of time, has however come to be pursued even after disposal of the proceedings in S.A.S.R.No.17855 of 2015, dated 4.3.2014. Therefore, it is evident that the present Second Appeal is not maintainable and accordingly, the same is liable to be dismissed with exemplary cost.

5. Accordingly, the Second Appeal is dismissed with cost of Rs.20,000/- payable to "Chief Justice Relief Fund", within a period of two weeks from the date of receipt of copy of this judgement.

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