

Premier Automobiles Ltd.

Vs

Kabirunissa and others

Civil Appeal No. 4822 of 1990

(L. M. Shara, M. N. Venkatachaliah JJ)

20.09.1990

ORDER

1. Special leave is granted.

2. This appeal arises out of a suit filed by the original plaintiff, who is now dead and has been substituted by his legal representatives, on the allegation that he was occupying a small cutcha building belonging to the appellant Company as a tenant, and that the building was wrongfully demolished, at the instance of the appellant. The appellant denied the claim of tenancy as also the other material averments in the plaint. The suit was decreed by the trial court and the appellant was directed to re-construct the demolished building and put the plaintiff in possession thereof. The decree was affirmed by the appellate Court and a writ application before the High Court was dismissed in limine.

3. In view of the order which we are proposing to pass, it is not necessary to give the details of the respective cases of the parties. During the pendency of the appeal before the appellate Court, an application for admitting additional evidence under Order 41, Rule 27 of the Code of Civil Procedure was filed by the appellants, which remained undisposed of. Even while pronouncing its judgment disposing of the appeal finally, the appellate court did not advert to it. It was only after the case was disposed of that the application for additional evidence was rejected by a short order, observing that the appellants had sufficient opportunity to produce the documents in the trial court, and it had failed to do so.

4. Having regard to the defence of the appellants and the reason given by the appellate court in its judgment, the application for additional evidence appears to be a matter of considerable importance and should not have been unceremoniously rejected in the manner in which it has been done after the appeal had been finally disposed of and the appellate Court had become functus officio. The appellants have defended the suit inter alia on the ground that the plaintiff was not a tenant and was in possession of the property in question as a mere licensee at least since 1969 onwards. The appellate Court rejected the plea by observing :-

"The appellants being big company, it is probable that they must have such agreement and documents with them but they have not attempted to produce the same."

In their application the appellants have explained the circumstances in which they could not produce

the relevant documents during the trial stage, and it was, therefore, necessary for court to have considered the same beforeproceeding to finally dispose of the appeal. Not having done so, the judgment was fit to be set aside. The High court dismissed the writ petition by a cursory order as mentioned below:-

"Heard counsels.

Rejected."

In our view the case requires reconsideration.

5. The learned counsel for the appellant has also placed before us several material pieces of evidence and circumstances including an important admission of the original plaintiff, and in reply the learned advocates for the respondents have relied upon the evidence led on their behalf and accepted by the first two Courts. We do not consider it appropriate to deal with them as in our view, the entire evidence led by the parties requires a fresh consideration by the Court of facts. Accordingly, we allow the appeal, set aside the judgments of the appellate Court and the, High Court, and remit the case to the appellate court for a fresh decision in accordance with law. The Court will, in the first instance, hear and dispose of the application under Order 41, Rule 27, Civil Procedure Code' and only thereafter take up the final hearing of the appeal.

6. At the time of issuance of notice, this Court had directed the appellant to deposit a sum of Rs. 5,000 / - to cover the costs of the respondents. In view of the respective financial positions of the parties, we direct that the said amount shall be allowed to be withdrawn by the respondents unconditionally and irrespective of the final decision in the present litigation.

Order accordingly.

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