



C.M.A(MD)No.695 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 14.09.2023

PRONOUNCED ON:08.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.695 of 2020

and

C.M.P.(MD)No.7053 of 2020

K.Selvaraj : Appellant/Respondent/Defendant

Vs.

1.R.Kalaiselvi

2.R.Sathishkumar

3.R.Nandakumar

: Respondents /Appellants/
Plaintiffs 2 to 4

PRAYER:- Civil Miscellaneous Appeal filed under Order 41 Rule 23 of the Code of Civil Procedure, 1908, against the Judgment and Decree dated 25.08.2020 made in A.S.No.3 of 2018, on the file of IV Additional District Judge, Madurai reversing and remitting back the judgment and decree dated 20.10.2016, made in O.S.No.372 of 2004, on the file of III Additional Sub-Court, Usilampatti Camp.

For Appellant : Mr.P.T.S.Narendravasan

For Respondents :Mr.J.Barathan



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C.M.A(MD)No.695 of 2020

JUDGMENT

This Civil Miscellaneous Appeal is directed against the judgment and decree passed in A.S.No.3 of 2018, dated 25.08.2020, on the file of IV Additional District Court, Madurai, setting aside the judgment and decree passed in O.S.No.372 of 2004, dated 20.10.2016, by IIIrd Additional Subordinate Court, Madurai, remanding the suit back to the trial Court for trial.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. It is not in dispute that the defendant has purchased the suit property vide sale deed dated 04.06.2001 and since then he has been in possession and enjoyment as the owner of the suit property.

4. The case of the plaintiff is that the defendant approached the plaintiff in the first week of September 2001 and offered to sell the suit property, that both of them after many negotiations have settled the sale price at Rs.2,10,000/- and they have entered into a sale agreement on



C.M.A(MD)No.695 of 2020

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26.09.2001 fixing the period of performance as two years, that the defendant has received Rs.2,00,000/- and handed over the parent title deed of the suit property to the plaintiff, that since the plaintiff incurred monetary loss, he could not raise the remaining sale consideration immediately and he approached the defendant in August 2003 and expressed his readiness and willingness to get the sale deed executed, that the defendant has given an evasive reply and evaded from executing the sale deed, that the plaintiff has then sent a legal notice dated 15.07.2004 informing the defendant that the plaintiff would be waiting at the Usilampatti Sub-Registrar office with the balance sale price on 23.07.2004 and asked him to come and execute the sale deed, that the defendant did not choose to perform his part of sale agreement, but sent a reply notice dated 21.07.2004 with false allegations, that the plaintiff has always been ready and willing to perform his part of sale agreement and that therefore, the plaintiff was constrained to file the above suit for specific performance of the agreement dated 26.09.2001.

5. Pending suit, the sole plaintiff died and his daughter and sons got themselves impleaded as plaintiffs 2 to 4.



C.M.A(MD)No.695 of 2020

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6. Pending suit, the plaint was amended for claiming alternative relief directing the defendant to refund the amount of Rs.2,00,000/- received by the defendant as advance with interest.

7. The defence of the defendant is that the defendant borrowed a sum of Rs.2,00,000/- on 26.09.2001 from the plaintiff agreeing to repay the same with interest at 48% p.a., to be paid in installments, that as per the demand of the plaintiff, the defendant was forced to execute a sale agreement on that day itself with regard to the suit property as a security for the due payment of the said loan, that the defendant was also forced to execute a Power of Attorney deed in favour of one Kalaivanan, who is the brother-in-law of the plaintiff, that the defendant has paid the entire loan amount even before the last week of June 2003, that when the defendant demanded for the return of sale agreement and Power of Attorney deed, the plaintiff evaded to return the same alleging that he has misplaced the same and promised to return as soon as they are traced, that since the plaintiff has not returned the same, the defendant informed the plaintiff that he would prefer a police complaint and enraged by the attitude of the defendant, the plaintiff induced his brother-in-law Kalaivanan to execute a sale agreement dated 28.07.2003 in favour of the



C.M.A(MD)No.695 of 2020

WEB COPY

deceased plaintiff's wife Kalaiselvi, that the defendant, after coming to know about the sale agreement in favour of the deceased plaintiff's wife, has executed a cancellation deed dated 23.06.2004, that the defendant has issued a notice dated 12.07.2004 calling upon the plaintiff, his wife and brother-in-law not to act upon the alleged sale agreements dated 26.09.2001 and 28.07.2003 respectively, as the same were not intended to be sale agreements, that the plaintiff after receiving the said notice, had issued the notice dated 15.07.2004 calling upon the defendant to execute the sale deed as a counterblast and on receiving the same, the defendant had sent a reply notice dated 21.07.2004, that there is no cause of action to file the suit and that the suit is liable to be dismissed.

8. The trial Judge, upon considering the pleadings, has framed the following issues and additional issues:

- (1) Whether the defendant is duty bound to execute a sale deed in favour of the plaintiff?
- (2) Whether the plaintiff has always been ready and willing to perform his part of the contract?
- (3) Whether the plaintiff is entitled to get the relief of specific performance?



C.M.A(MD)No.695 of 2020

WEB COPY

(4) Whether the plaintiff is entitled to get the alternative relief of refund of advance amount with interest?

(5) To what other relief, the plaintiff is entitled?

9. During trial, the plaintiffs have examined the fourth plaintiff as P.W.1 and two other witnesses as P.W.2 and P.W.3 and exhibited three documents as Exs.A.1 to A.3. The respondent has examined himself as D.W.1 and one other witnesses as D.W.2 and adduced no documentary evidence. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree dated 20.10.2016 by holding that Ex.A.1 – sale agreement was executed as a security for the own transaction and as such the plaintiff is not entitled to get the relief of specific performance, that since Ex.A.1 is not the sale agreement, the plaintiff is also not entitled to get the refund of advance amount and that since the suit was filed after three years for recovery of amount under Ex.A.1, the suit is barred by limitation, dismissed the suit.



C.M.A(MD)No.695 of 2020

WEB COPY

10. Aggrieved by the impugned judgment and decree, the plaintiffs have preferred the appeal in A.S.No.3 of 2018 and the learned IV Additional District Judge, Madurai, upon considering the evidence available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 25.08.2020 setting aside the judgment and decree passed by the trial Court and remanded the case back to the trial Court for the purpose of examining the additional witnesses on the plaintiffs' side and for reception of additional evidence filed in I.A.No.1123 of 2019 and also for the defendant to produce the evidence for showing the discharge of the loan amount. Aggrieved by the order of remand, the defendant has come forward with the present Civil Miscellaneous Appeal.

11. Heard the learned Counsel for the appellant and the learned Counsel for the respondents and perused the materials placed on record.

12. The appellant, in the memorandum of appeal, has raised the grounds that the appellate Court erred in allowing the application for reception of additional documents when those documents of parents documents relating to the alleged sale agreement which will not anyway



C.M.A(MD)No.695 of 2020

help the case of the plaintiffs and those documents are not relevant to the case, that the Power of Attorney deed executed in favour of the plaintiff's brother-in-law and based on the said Power of Attorney deed, the sale agreement has been created, have been totally suppressed by the plaintiffs in their pleadings, that the appellate Court failed to notice that the plaintiffs have not proved that Ex.A.1 was executed only as a sale agreement, but on the other hand, the defendant has proved that Ex.A.1 sale agreement was executed only as a security for the loan transaction and as such, the same could not be termed as sale agreement, that the appellate Court has also erred in finding that all original documents relating to the suit property were with the plaintiff based on the sale agreement under Ex.A.1 and the same could not be termed as loan transaction, that P.W.2 who is the brother-in-law of the plaintiff, in his evidence, deposed that the amount of Rs.2,00,000/- borrowed from the plaintiff by the defendant was repaid by the defendant is sufficient to dismiss the suit, that the appellate Court also erred in directing the trial Court to decide the issue whether Ex.A.1 is a sale agreement or money transaction based on the additional documents filed by the plaintiff in the appeal, particularly when the additional document is not a crucial one and that therefore, the impugned judgment and decree made in A.S.No.3



C.M.A(MD)No.695 of 2020

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of 2018, dated 25.08.2020, remitting the case back to the trial Court is liable to be set aside.

13. The points that arise for consideration are:

(1) Whether the appellate Court erred in remanding the matter back to the trial Court for production of additional witnesses by the plaintiff and for admitting the additional documents filed along with the petition in I.A.No.1123 of 2019 and for the defendant to adduce evidence to prove the discharge pleaded by him, in the absence of any application filed by the appellants and the respondents seeking the above reliefs and that the same is not in conformity with the provisions of Rule 23 or 23(A) of Order 41 C.P.C.?

(2) Whether the order of remanding the suit back to the trial court is liable to be set aside?

(3) What other reliefs the parties are entitled?

Points 1 to 3:

14. It is admitted by both parties that Ex.A.1 was executed on 26.09.2001 as sale agreement. The case of the plaintiffs is that the defendant has offered to sell the suit property and the deceased plaintiff agreeing to purchase the suit property had entered into a sale agreement



C.M.A(MD)No.695 of 2020

WEB COPY

on 26.09.2001 and whereas according the defendant, Ex.A.1 – sale agreement was executed only as a security for the loan obtained at Rs.2,00,000/- from the deceased plaintiff. As already pointed out, the learned trial Judge, considering the evidence available on record and more particularly taking note of the evidence of the plaintiffs' witnesses, P.W.2 and P.W.3, has come to a decision that Ex.A.1 was executed only as a security for loan transaction and that therefore, the plaintiffs are not entitled to get the relief of specific performance.

15. The plaintiffs have now agreed that the defendant has executed a Power of Attorney deed in favour of the deceased plaintiff's brother-in-law Kalaivanan on the same day and that subsequently, the said Kalaivanan, in pursuance of the said Power of Attorney deed, has executed a sale agreement in favour of his sister Kalaiselvi, who is none other than the wife of the deceased plaintiff. As rightly observed by the learned trial Judge, it is pertinent to note that the deceased plaintiff or the plaintiffs impleaded subsequently, have nowhere whispered about the alleged Power of Attorney deed and the sale agreement executed in pursuance of the said Power of Attorney deed in the plaint or in the amended plaint.



C.M.A(MD)No.695 of 2020

WEB COPY

16. Pending appeal, the plaintiffs have filed an application under Order 41 Rule 27 C.P.C., for reception of additional documents alleging that after filing of the appeal and as per the instructions of their Counsel, while they were searching for the documents, they have found out the availability of the original documents handed over by the defendant to the deceased plaintiff at the time of the execution of Ex.A.1 – sale agreement and that the said documents are very much required to prove that Ex.A.1 was executed for getting the sale of the suit property.

17. The defendant, by filing a counter statement, raised objections that the plaintiffs have not assigned any reason or ground for receiving the additional document under Order 41 Rule 27 C.P.C., that the parent deeds of the defendant have absolutely no connection with the present suit and that the above petition has been filed only to drag on the proceedings.

18. As rightly pointed out by the learned Counsel for the defendant, the appellate Court has observed as follows:



C.M.A(MD)No.695 of 2020

“கிரைய ஒப்பந்தம் கடனுக்காக பதிவு செய்யப்பட்டதாக பிரதிவாதி தர்ப்பில் வாதுரை முன்வைத்த நிலையில் அசல் ஆவணங்கள் அனைத்தும் தற்பாது வாதி வசம் உள்ளது என்பதை அறியமுடிகிறது. நேத வழக்கில் வாதி தர்ப்பில் தாக்கல் செய்யப்பட்டு உள்ள ஆவணங்கள் அனைத்தும் அசல் ஆவணங்களாக உள்ளதாலும்இ கிரைய ஒப்பந்தம் வாதி மற்றும் பிரதிவாதிக்கு டேயில் ஏற்பட்டதால்தான் அசல் ஆவணங்கள் 1ம் வாதி வசம் பிரதிவாதியால் கொடுக்கப்பட்டு உள்ளது என்பதும் தோரியவருவதாலும்இ கடனுக்காக ஏற்படுத்திக் கொண்ட பதிவு செய்யப்பட்ட கிரைய ஒப்பந்தம் என்று பிரதிவாதி தர்ப்பு வழக்கறிஞரின் வாத்தம் ஏற்றுக்கொள்ளக்கூடியதாக நேந்தாலும்இ கிரைய ஒப்பந்தத்தில் கண்டுள்ள தொகை எந்த ுத்தியில் வாதிக்கு பிரதிவாதி திருப்பிச் செலுத்தினார் என்பதைக் குறித்து ஆவணம் எதுவும் தாக்கல் செய்யப்படாத நிலையில் “

Thereafter the appellate Court has proceeded to decide that the additional documents filed in I.A.No.1123 of 2019 are to be exhibited and directed the trial Court to record additional evidence in that regard. At this juncture, it is necessary to refer the observations of the appellate Court hereunder for better appreciation:

“நேந்திமன்றம் ுமால் கண்டவாறு பரிசீலனை செய்ததன் அடிப்படையில்இ தாவா தொகையானது 1ம் வாதியால் பிரதிவாதிக்கு



C.M.A(MD)No.695 of 2020

WEB COPY

கடன் என்ற பெயரில் கொடுக்கப்பட்டதா? அல்லது கிரைய முன்பணமாக கொடுக்கப்பட்டதா? என்பதை தீர்மானிக்க தொகை பரிமாற்றத்தின் ஁பாது பிரதிவாதியால் 1ம் வாதியிடம் கொடுக்கப்பட்டதாகச் சொல்லப்படும் வழக்கிடை மனு எண். 1123/2019ல் கண்ட ஆவணங்களை குறியீடு செய்துஇ அதன் ஁பரில் உரிய கூடுதல் சாட்சியம் பதிவு செய்ய விசாரணை நீதிமன்றத்திற்கு அறிவுறுத்தியும்இ அவ்வாறு விசாரணை செய்யப்படும் சாட்சியிடம் குறக்கு விசாரணை செய்த பின்னர் தான் ஒரு தெளிவான முடிவுக்கு வர யேலும் என்பதாலும்இ நீத வழக்கின் வழக்கெழு ழிலமானது கடன் தொகையை வரப்பற்றுவதற்கானதா? அல்லது ஏற்றதை ஆற்றுதல் பரிகாரத்திற்கானது? என்று தீர்மானித்தால்தான்இ வழக்கானது காலவரையறையால் பாதிக்கப்பட்டு உள்ளதா? என்ற முடிவுக்கு வர யேலும் என்று நீதிமன்றம் கருதுவதாலும்இ பிரதிவாதி தரப்பில் எடுத்துரைக்கப்படும் முக்கிய வாதமான 1ம் வாதியிடம் பிரதிவாதி பெற்றதாகச் சொல்லப்படும் கடன் தொகை முழுவதும் 2001ம் ஆண்டு ஜீன் மாத றுதியில் பிரதிவாதி திருப்பிச் செலுத்திவிட்டார் என்ற வகையில் அமைந்துள்ளதால்இ தேனைப் பொறுத்து பிரதிவாதி தரப்பில் விசாரணை நீதிமன்றத்தில் எந்த ஒரு ஆவணமும் தாக்கல் செய்யப்படவில்லை என்ற நிலையில்இ வா.சா.2 மற்றும் வா.சா.3 ஆகிய சாட்சிகள் கடனைத் திருப்பிச் செலுத்திவிட்டதாக சாட்சியம் அளித்து உள்ளதால் கடனைத் திருப்பிச் செலுத்தியதற்கான ஆவணம் ரூப்பின் அவற்றை உரிய வகையில்



C.M.A(MD)No.695 of 2020

நீதிமன்றத்தில் தாக்கல் செய்ய பிரதிவாதிக்கு அறிவுறுத்தியும்இ கிரைய ஒப்பந்த ஆவணமாக வா.சா.ஆ.1ல் சாட்சி கையொப்பம் பேட்ட நபர்களை விசாரித்து வாக்குமூலம் பதிவு செய்யுவண்டியது அவசியமானதாகிறது என்பதால் அவர்களுக்கு உரிய அழைப்பாணை சார்வு செய்து நீதிமன்றத்தில் அவர்களுடைய சாட்சியம் பதிவு செய்யப்பட ுவண்டும் என் அறிவுறுத்தியும்இ ுமற்படி வழக்கிடை மனுவில் கண்ட ஆவணங்களை மனுதாரர்கள் ுமல்முறையீட்டு நீதிமன்றத்தில் நேந்து திரும்பப் பெற்று அவற்றை விசாரணை நீதிமன்றத்தில் தகுந்த சாட்சியம் மூலம் குறியீடு செய்து கொள்ள அறிவுறுத்தியும்இ அவ்வாறு பதிவு செய்யப்பட்ட கூடுதல் சாட்சியம் மற்றும் சான்றாவணங்களைப் பரிசீலனை செய்த பின்னர் தீர்ப்பு வழங்குவத நீதிக்கு உகந்தது என்று நீதிமன்றம் கருதுவதால் அசல் வழக்கை விசாரணை நீதிமன்றத்திற்கு மீட்டனுப்புகை செய்ய நீத ுமல்முறையீட்டு நீதிமன்றம் உத்தரவிடுகிறது. பிரதிவாதி தரப்பில் கடன் தொகையை திருப்பிச் செலுத்தியதற்கான ஆவணம் எதுவும் ரூப்பின் அவற்றையும் பிரதிவாதி விசாரணை நீதிமன்றத்தில் கூடுதல் ஆவணங்களாக தாக்கல் செய்வதற்கு அனுமதி அளிக்கப்படுகிறது. ுமற்சொன்ன குறைகளை நிவர்த்தி செய்த பின்னர்இ வழக்கு ுகாப்பு கிடைக்கப் பெற்ற 6 மாத காலத்திற்குள் விசாரணை நீதிமன்றம் தீர்ப்பு பகர ுவண்டும் என்றும் உத்தரவிடப்படுகிறது.”

19. Considering the above, the appellate Court has not decided



C.M.A(MD)No.695 of 2020

anything, but only decided to remand the matter back to the trial Court.

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20. Before entering into further discussion, it is necessary to refer Order 41 Rule 23 and 23(A) C.P.C.:

“23. Remand of case by Appellate Court

Where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issue shall be tried in the case so remanded, and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A. Remand in other cases

Where the court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a



WEB COPY



C.M.A(MD)No.695 of 2020

re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.”

21. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Sirajudheen Vs. Zeenath and Others*** reported in ***2023 LiveLaw (SC) 145*** and the relevant passages are extracted hereunder:

“11. One of the striking features of the impugned judgment dated 28.06.2019 is that even while dealing with a regular first appeal against the judgment and decree of the Trial Court, the High Court has not even adverted to the findings of the Trial Court pertaining to the present case and has not specified as to how the findings recorded by the Trial Court were unsustainable or unjustified. As noticed, in the impugned judgment, the High Court has narrated a few circumstances leaning in favour of the plaintiff (in paragraph 21) and then a few other circumstances which favour the genuineness of the sale in question (in paragraph 22) and thereafter, has observed that the evidence necessary for a proper determination of the suit had not been brought on record; and that the evidence on record was insufficient to arrive at a proper finding in favour



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C.M.A(MD)No.695 of 2020

or against the sale deed in question. The High Court would further observe that material witnesses have not been examined and no evidence has been brought in with regard to passing of consideration.

11.1. With respect, what turns on the observations in the impugned judgment is that the High Court was unable to arrive at a conclusion on the basis of the material on record. However, fact of the matter remains that on the basis of the same material on record, the Trial Court had indeed arrived at a definite conclusion that the plaintiff had failed to establish her case and hence, the suit was liable to be dismissed. As indicated hereinabove, the High Court has not at all referred to the findings of the Trial Court and it is difficult to find from the judgment impugned as to why at all those findings of the Trial Court were not to be sustained or the decree was required to be reversed.”

22. In the present case, the learned trial Judge, on the basis of the evidence available on record, has come to a definite conclusion that the plaintiffs had failed to establish their case and as such, their suit was liable to be dismissed. But the learned appellate Judge, without considering or appreciating the evidence available on record, has arrived at a finding that the case has to be remanded back to the trial Court and thereafter proceeded to set aside the judgment and decree passed by the



C.M.A(MD)No.695 of 2020

trial Court. Though the trial Court has given a specific findings to all the issues framed, the appellate Court has neither considered nor shown as to how the findings of the trial Court were not sustainable.

23. Admittedly, the plaintiffs have not filed any application seeking permission to examine the witnesses shown in Ex.A.1 sale agreement either before the trial Court or before the appellate Court. Without any application or prayer for examining those witnesses, as rightly contended by the learned Counsel for the defendant, the appellate Court by itself suo motu directed the trial Court to summon and examine the witnesses of Ex.A.1. Moreover the appellate Court has not given any finding that the plaintiffs have satisfied the conditions required under Order 41 R 27 C.P.C., for reception of additional documents. But without assigning any reason, the appellate Court has allowed the petition for reception of additional evidence and directed the trial Court to exhibit the documents and then to record additional evidence in that regard. Moreover, the defendant has also neither filed any application nor made any prayer to give an opportunity to prove the alleged discharge of loan. But the trial Court, without assigning any proper reason, has permitted the defendant to produce the documents to prove the discharge of the



C.M.A(MD)No.695 of 2020

loan alleged by him.

WEB COPY

24. As rightly contended by the learned Counsel for the defendant, absolutely there is no basis for making such directions for remanding the suit. As already pointed out, the trial Court has specifically given findings with regard to the nature of Ex.A.1 and the plea of limitation for refund of the amount claimed. The appellate Court has not proceeded to consider the correctness of the said findings, but on the other hand, without any application or prayer, has mechanically permitted the plaintiffs to examine the additional witnesses and the defendant to produce the additional evidence.

25. The Hon'ble Supreme Court in *Sirajudheen's case*, above referred has specifically observed that merely because a particular evidence had not been produced, the appellate Court cannot adopt the soft course of remanding the matter and the relevant passage is extracted hereunder:

“14. In regard to the want of any particular evidence, we may observe in the passing that if the Court finds any particular



C.M.A(MD)No.695 of 2020

evidence directly within the control and possession of a party having not been produced, the necessary consequences like those specified in illustration (g) to Section 114 of the Evidence Act may follow but, merely because a particular evidence which ought to have been adduced but had not been adduced, the Appellate Court cannot adopt the soft course of remanding the matter. We would hasten to observe that we are not commenting on the merits of the case either way. The observations herein are only to indicate that the remand of the suit for trial de novo cannot be considered justified in the present case from any standpoint.”

26. It is settled law that the scope of remand in terms of Rule 23 of Order 41 C.P.C., is very limited and that the necessary requirement for invoking Rule 23(A) of Order 41 C.P.c., is that the decree is reversed in appeal and a re-trial is considered necessary. It is necessary to refer the following passage in ***Sirajudheen's case*** above referred:

11.2. After having taken note of the salient features of the impugned judgment as also the significant omissions therein, if we refer to the provisions empowering the Appellate Court to make an order of remand, it is difficult to find any justification for remand by the High Court in the present case. As noticed, the scope of remand in terms of Rule 23 of Order XLI CPC is extremely limited and that



WEB COPY



C.M.A(MD)No.695 of 2020

provision is inapplicable because the suit in question had not been disposed of on a preliminary point. The remand in the present case could only be correlated with Rule 23-A of Order XLI CPC and for its applicability, the necessary requirements are that “the decree is reversed in appeal and a re-trial is considered necessary”. As noticed hereinabove, there is no reason whatsoever available in the impugned judgment as to why and on what basis the decree was reversed by the High Court. Obviously, the reversal has to be based on cogent reasons and for that matter, adverting to and dealing with the reasons that had prevailed with the Trial Court remains a sine qua non. Thus, remand in the present case cannot be held justified even in terms of Rule 23-A of Order XLI CPC. 11.2. After having taken note of the salient features of the impugned judgment as also the significant omissions therein, if we refer to the provisions empowering the Appellate Court to make an order of remand, it is difficult to find any justification for remand by the High Court in the present case. As noticed, the scope of remand in terms of Rule 23 of Order XLI CPC is extremely limited and that provision is inapplicable because the suit in question had not been disposed of on a preliminary point. The remand in the present case could only be correlated with Rule 23-A of Order XLI CPC and for its applicability, the necessary requirements are that “the decree is reversed in appeal and a re-trial is considered necessary”. As noticed



WEB COPY



C.M.A(MD)No.695 of 2020

hereinabove, there is no reason whatsoever available in the impugned judgment as to why and on what basis the decree was reversed by the High Court. Obviously, the reversal has to be based on cogent reasons and for that matter, adverting to and dealing with the reasons that had prevailed with the Trial Court remains a sine qua non. Thus, remand in the present case cannot be held justified even in terms of Rule 23-A of Order XLI CPC. “

27. Considering the above and taking note of the legal position above referred, this Court has no hesitation to hold that the impugned order remanding the case for the purpose of examining Ex.A.1 witnesses, for exhibiting the documents filed in I.A., and adducing additional evidence in that regard and for production of additional evidence by the defendant to prove his plea of discharge, in the absence of any application or prayer of the plaintiffs or the defendant and without complying the mandatory requirements contemplated under Order 41 Rule 27 and Order 41 Rule 23 and 23(A) C.P.C., is not in accordance with law and the same is liable to be set aside and the above points are answered accordingly.



C.M.A(MD)No.695 of 2020

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28. In the result, the Civil Miscellaneous Appeal is allowed and the impugned judgment and decree passed in A.S.No.3 of 2018, dated 25.08.2020, on the file of IV Additional District Court, Madurai, is set aside and the appellate Court is directed to restore the appeal and to hear the same and dispose of the same in accordance with law within a period of two months from the date of receipt of a copy of this judgment. Consequently, the connected Miscellaneous Petition is closed. Considering the other facts and circumstances of the case, there shall be no order as to costs.

08.12.2023

NCC : Yes : No

Index : Yes : No

Internet : Yes : No

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C.M.A(MD)No.695 of 2020

To
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1. IV Additional District Court, Madurai.
2. III Additional Sub-Court, Usilampatti Camp.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)No.695 of 2020

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)No.695 of 2020

08.12.2023