

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A. Nos.864 and 865 of 2015
and MP.1/2015 in CMA.864/2015

1.Marayal
2.Thangavel

... Appellants in both CMAs

Vs

1.Pongianna Gounder
2.Venkatachalapathy
3.Poonkodi
4.Jothi
Ramasamy (died)
5.Samiyappan
6.Karuppa Gounder
7.Palani Gounder
8.Chinna Karuppa Gounder
9.Saravanan
Subramani (died)
10.Minor. Saravanan, rep. by court
Guardian Selvi.M. Praveea
Karuppayal (died)
11.Chinnammal
N.N. Egambaram (died)
12.Natarajan @ Rathinasamy
13.Paramasivam
14.Karuppayal
15.Sekar

(R5 to 9, and 11 to 15 were set exparte
before the court's below) ... Respondents in both CMAs

C.M.A.No.864 of 2015 is filed under Order XXXXIII Rule 1 (U) of CPC against the decree and judgment dated 12.06.2013 passed in A.S.No.128 of 2012 on the file of the Principal District Judge of Erode, Erode District, reversing the decree and judgment dated 19.06.2009 passed in O.S.No.160 of 2004 by the 1st Additional Sub Court, Gobichettipalayam, Erode District.

C.M.A.No.865 of 2015 is filed under Order XXXXIII Rule 1 (U) of CPC against the decree and judgment dated 12.06.2013 passed in A.S.No.129 of 2012 on the file of the Principal District Judge of Erode, Erode District, reversing the decree and judgment dated 19.06.2009 passed in O.S.No.160 of 2004 by the 1st Additional Sub Court, Gobichettipalayam, Erode District.

In both CMAs
For appellants : Mr.I.C.Vasudevan

For R1 : Mr.I.Abrar Md.Abdullah
for Mr.V.P.Karthikeyan

COMMON JUDGMENT

Aggrieved against the common judgment and decree passed by the learned first appellate Court in reversing the judgment and decree passed by the learned trial Court, the appellants herein, who are the defendants 8 and 9 before the trial Court, have filed the present applications.

2. Assailing the reasoning given by the learned first appellate Court at paragraph 26 of the judgment that no Court fee was paid till 18.06.2009, which is just one day before delivering the judgment by the trial Court, it is submitted by the learned counsel appearing for the appellants that on the date when the defendants 8 and 9 filed their written statement on 06.04.2005, they have paid the Court fee for the relief of declaration of title, namely, for counter claim. It is further submitted that although the appellants herein have repeatedly paid the Court fee, the same has not been properly looked into by the learned first appellate Court. However, he pleaded, he has no objection for upholding the impugned judgment and decree passed by the learned first appellate Court and while upholding the same, this Court may direct the trial Court to proceed with the trial afresh by keeping all the evidences so recorded during the previous trial.

3. I find merit in the above said submissions of the learned counsel appearing for the appellants, which is in fine tune with the Order 41 Rule 23 of CPC. For better appreciation, the same is reproduced hereunder:

"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 issues 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."

4. A mere perusal of the above said Rule shows that if any evidence is recorded during the original trial, the same shall be the evidence during the trial after remand, subject to all just exceptions. Therefore, the impugned judgment and decree passed by the learned first appellate Court by remanding the matter back to the learned trial Court is hereby confirmed. Consequently, the learned trial Court is directed to take up both the suits and dispose of the same on merits and in accordance with law within a period of six months from the date of receipt of a copy of this judgment, by taking note of the evidences already so recorded along with fresh evidence for deciding the issue. Both the parties are at liberty to adduce fresh evidence.

5. With the above said directions, the Civil Miscellaneous Applications stand dismissed. No Costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Principal District Judge of Erode,
Erode District.

2.The 1st Additional Sub Judge,
Gobichettipalayam, Erode District.

+1cc to M/s. I.C. Vasudevan, Advocate, S.R.No.62529

+1cc to M/s. V.P.K. Gowtham, Advocate, S.R.No.62225

ALA(CO)

EU(12/01/2016

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865 of 2015