

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.M.A.No.3734 of 2005

1.V.Srinivasan
2.T.Venkatraman

.. Appellants

Vs.

1.Selvaraj
2.Chidambaram
3.Arunachalam

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(a) read with Section 104 of Civil Procedure Code, against the Order of Remand made in A.S.No.42 of 2000 and Cross Objections dated 21.06.2005 on the file of the Subordinate Judge's Court at Ariyalur reversing the Judgment and Decree in O.S.No.403 of 1996 dated 23.09.1999 on the file of the District Munsif Court at Jeyankondam.

For Appellants : Mr.Mukund for M/s.Sarvabhauman Associates

For Respondents : No Appearance

J U D G M E N T

The present appeal is at the instance of the plaintiffs in O.S.275/1994 on the file of the Sub Court, Ariyalur, which was subsequently transferred to the file of District Munsif Court, Jeyankondam and re-numbered as O.S.No.403 of 1996.

2.The plaintiffs are aggrieved by the order of remand made by the lower Appellate Court. The suit in O.S.No.403 of 1996 was filed by the plaintiffs before the trial Court seeking declaration of the title to the suit properties, permanent injunction restraining the defendants from interfering with their possession of certain items of properties and for recovery of possession of certain items.

3.The trial Court, upon consideration of the evidence on record, accepted the case of the plaintiffs that there was an oral partition in the family in the year 1951 and decreed the suit in respect of the properties except item 6. Further, the trial Court held that the plaintiffs are entitled to a decree for declaration in respect of all the suit items except item 6 and for permanent injunction restraining the defendants from interfering with the possession of the plaintiffs in respect of item Nos. 2 to 5, 7, 8 and 10. It was concluded that the plaintiffs are entitled to recovery of possession of items 1, 2 to 9 from the defendants along with mesne profits.

4.Aggrieved over the same, the defendants preferred an appeal in A.S.No.42 of 2000 and the plaintiffs have also preferred a cross objection. The learned Appellate Judge, taking into account the pattas issued to both the plaintiffs and defendants, concluded that the trial Court erred in granting a decree in favour of the plaintiffs. The lower Appellate Court, however, concluded that in the light of

the conflict between the revenue documents, the matter should be remitted to the trial Court to enable the parties to adduce additional evidence regarding the title claimed by them. By holding so, the learned Appellate Judge set aside the judgment and decree of the trial Court and remitted the suit to the trial Court with direction to the parties to adduce fresh evidence under Order 41 Rule 23 (A) of the Code of Civil Procedure. Aggrieved by that, the plaintiffs have come forward with the present appeal.

5. Heard Mr.S.Mukund, for M/s.Sarvabhauman Associates, learned counsel appearing for the appellants, though the respondents have been served, they have not chosen to appear before this Court either in person or through counsel. The main reason for remanding the suit to the trial Court is that the trial Court has not considered Ex.B-34 (6 pattas). The six pattas have been issued in favour of the defendants under the U.D.R. scheme. It is seen from the records that the said document viz; Ex.B-34 (series) have been issued in the year 1996, i.e., after filing of the present suit. On the other hand, the plaintiffs have produced the documents prior to the suit, viz; in the year 1994, by which pattas have been granted to the plaintiffs in respect of the suit properties. The lower Appellate Court over looked the fact that Ex.B-34 has been obtained after the filing of the suit. Hence, I do not find any ground available to the Lower Appellate Court for remitting the matter to the trial Court and it is for the lower Appellate Court to dispose of the appeal in the manner known to law rather than remanding the matter by relying upon documents which come into existence after the suit. A

Division Bench of this Court in ***Palanisamy @ Uthayarpalayanthan .Vs. Apparsamy*** reported in ***[2002 (4) CTC 232]*** has held that when the materials are available on record, the lower Appellate Court should have decided disposed of the appeal on merits rather than remanding the same under Order 41, Rule 23(A) CPC. In addition to that, the document which was relied upon by the lower Appellate Court to conclude that the plaintiffs have to prove their title, is a document which has been obtained after the suit. Therefore, I find that the order of remand is without jurisdiction and the same has to be set aside.

6.Accordingly, the order of remand by the lower Appellate Court made in A.S.No.42 of 2000 and cross objection 42/2000 is set aside and the appeals are restored and the lower Appellate Court is directed to dispose of the Appeal on merits on the basis of the available evidence, within a period of four months from the date of receipt of a copy of this order and report such disposal to this Court.

7.Hence, the Civil Miscellaneous Appeal is allowed. There will be no order as to costs.

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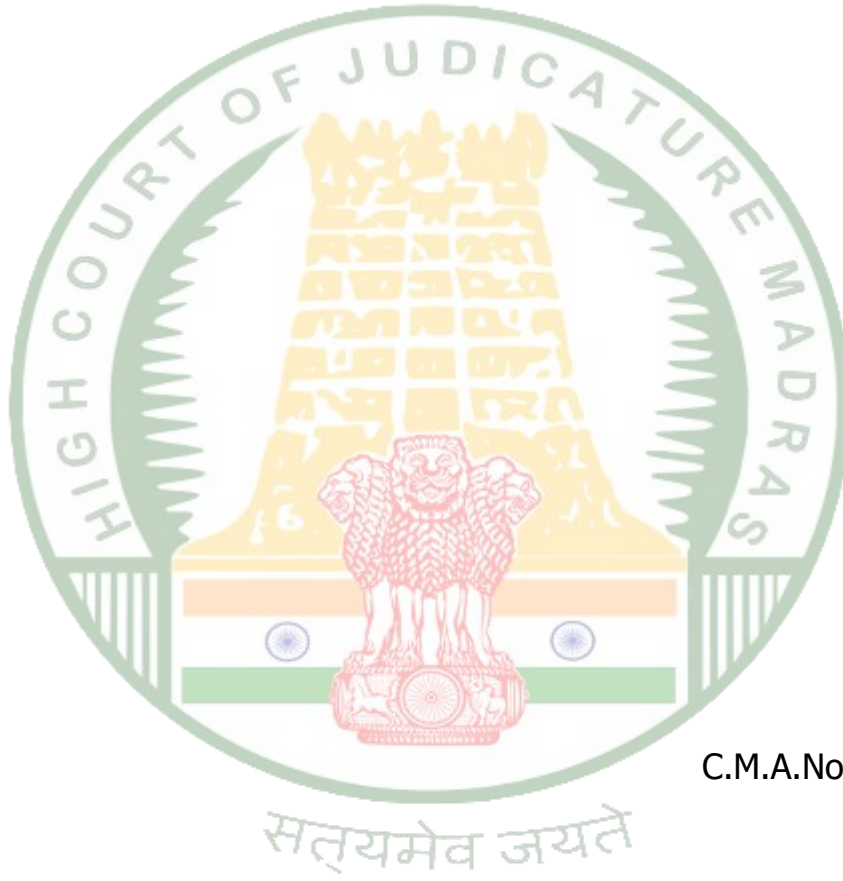
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R.SUBRAMANIAN., J.

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