

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2017

Coram

THE HON'BLE MR. JUSTICE M.DURAISWAMY

C.M.A.No.498 of 2016 &
C.M.P.No.4194 of 2016

1.Angammal
2.Jayanthi ... Appellants

v.
1.Pooraniammal Respondent

Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code against the Judgment and decree order dated 03.11.2015 made in A.S.No.11 of 2013 on the file of District Judge, Tiruvannamalai remanding the Judgment and decree dated 09.04.2013 made in O.S.No.166 of 2009 on the file of Principal Subordinate Judge, Tiruvannamalai.

For Appellants : Mr.K.Venkatasubban

For Respondent : Mr.V.Jayaprakash Narayanan

J U D G M E N T

Challenging the Judgment and decree passed in A.S.No.11 of 2013 on the file of District Court, Tiruvannamalai, setting aside the Judgment and decree passed in O.S.No.166 of 2009 on the file of Principal Subordinate Court, Tiruvannamalai, remanding the matter for fresh consideration, the defendants 1 and 2 in O.S.No.166 of 2009, have filed the above Civil Miscellaneous Appeal.

2. The plaintiff filed the suit in O.S.No.166 of 2009 for partition and separate possession. The defendants filed their written statement and contested the suit.

3.. Before the trial Court, on the side of the plaintiff, P.W.1 was examined and 5 documents, Exs. A-1 to A-5 were marked and on the side of the defendants, 2 witnesses were examined, however, no document was marked.

4. The trial Court, after taking into consideration the case of both the parties, dismissed the suit.

5. Aggrieved over the Judgment and decree of the trial Court the plaintiff preferred an appeal in A.S.No.11 of 2013 before the District Court, Tiruvannamalai.

6. The Lower Appellate Court, after hearing the submissions made by the learned counsel on either side, set aside the judgment and decree of the trial Court and remanded the matter back to the trial Court for deciding the matter afresh after giving sufficient opportunities to both parties for the production of the documents and evidence if any and directed the trial Court to decide the matter in accordance with law. While remanding the matter, the Lower Appellate Court observed that the trial Court did not appreciate the evidence of the plaintiff properly and the impugned judgment was passed without considering the evidence produced by the plaintiff.

7. When the judgment and decree of the trial Court is under challenge in A.S.No.11 of 2013 before the District Court, Tiruvannamalai, it is the duty of the Lower Appellate Court to consider all the oral and documentary evidences and decide the appeal in accordance with law. The Lower Appellate Court instead of considering the oral and documentary evidences, set aside the judgment and decree of the trial Court and remanded the matter to the trial Court for fresh consideration. Under Order 41 Rule 24 of CPC, the Lower Appellate Court has to consider the oral and documentary evidences and give a finding with regard to the correctness of the judgment and decree passed by the trial Court.

8. Mr. K. Venkatasubban, learned counsel appearing for the appellants in support of his contentions, relied upon a judgment reported in 2007(3) CTC 383 [Arockia Prakash v. Rangasamy] wherein this Court held that if material particulars are available, the Appellate Court itself should decide the matter one way or the other. Remanding the matter for fresh adjudication gives the litigation a fresh lease of life in the protraction of proceedings.

9. Mr. V. Jayaprakash Narayanan, learned counsel appearing for the respondent submitted that there is a possibility of settlement between the parties, hence, the Lower Appellate court may be directed to consider the proposal of settlement put forth by the respondent.

10. However, learned counsel appearing for the appellants submitted that the appellants have instructed him that there is no possibility of settlement.

11. In that view of the matter, learned counsel appearing for the respondent submitted that liberty may be given to the respondent of file an application under Order 41, Rule 27 of CPC to adduce additional evidence.

12. The judgment relied upon by the learned counsel appearing for the appellant squarely applies to the facts and circumstances of the present case.

13. In these circumstances, the judgment and decree passed by the District Court, Tiruvannamalai in A.S.No.11 of 2013 are set aside and the matter is remanded back to the District Court, Tiruvannamalai for fresh consideration. The District Judge, Tiruvannamalai is directed to consider all the oral and documentary evidences let in by the parties, after giving sufficient opportunities to both parties and decide the appeal on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment. In the event of the respondent filing an application under Order 41, Rule 27 of CPC, the same shall be considered by the Lower Appellate Court on merits and in accordance with law. It is open to the parties to settle the matter if they wish to.

With these observations, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The District Judge, Tiruvannamalai.

2. Principal Subordinate Judge, Tiruvannamalai.

Copy to: The Section Officer,

VR Section, High Court, Madras.(2-copies)

+ 1 cc to M/s. Sarvabhauman Associates, Advocate SR.89667

+ 1 cc to Ms. V. Jayaprakash, Advocate SR.89761

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RK(CO)

EU(06/02/2018)