

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2017

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

CMA.No.777 of 2016  
and C.M.P.No.6358 of 2016

V.T.R.Palanisamy Chettiar ... Appellant/Plaintiff

Vs.

V.T.R.P.Rangasamy Chettiar (Deceased)

1. V.T.R.Srinivasan
2. S.Venkalakshmi
3. Minor Suriya Naraynan ... Respondents/Defendants 2to4

Prayer : Civil Miscellaneous Appeal filed under Order XLIII Rule 1(u) of C.P.C, 1908 against the judgment and decree dated 17.11.2015 in A.S.No.77 of 2005 on the file of the II Additional District and Sessions Court, Salem, reversing the judgment and decree dated 22.04.2004 made in O.S.No.228 of 2003 on the file of the Additional Sub Court, Salem.

For Appellant : Mr.K.Selvaraj

For Respondents 1 to 3 : Mr.J.Thilagaraj

JUDGMENT

The plaintiff is the appellant, challenging the order of remand passed by the lower appellate Court in A.S.No.77 of 2005.

2. The appellant had filed the suit in O.S.No.228 of 2008, on the file of the Subordinate Court, Salem for declaration that he is the absolute owner of the suit property and for delivery of possession of the suit property as well as for mesne profits. After an elaborate trial, the suit was decreed on merits. Aggrieved by the same, the respondents herein had filed A.S.No.77 of 2005 before the Fast Track Court No.I, Salem. The first Appellate Court, vide judgment and decree dated 24.11.2006, remanded the case to the trial Court on the ground of jurisdiction. Against the said order of remand passed in A.S.No.77 of 2005, the appellant / plaintiff herein preferred C.M.A.No.1159 of 2007 before this Court.

3. This Court had considered the entire case on merits and was pleased to set aside the order of remand holding that as the suit had already been decreed, after giving a finding on as many as 12 issues which were framed, there was no necessity for remanding the same to the trial Court and that the First Appellate Court is not justified in remanding the same. Therefore, the lower Appellate Court was directed to dispose of

the appeal suit on merits and dispose of the same in accordance with law within the time frame fixed by this Court.

3. However, it is contended by the learned counsel for the appellant that in utter violation of the order of this Court, the lower Appellate Court, without deciding the case on merits and giving a finding on all the points formulated by the trial Court, the lower Appellate Court simply set aside the judgment and decree of the trial Court and again remanded the case to the trial Court, by order dated 17.11.2015 on the ground that the trial Court had not considered as to whether the suit property is a joint family property or a separate property of the first defendant.

4. When the suit has already suffered a remand and when there are sufficient materials available on record to decide the said question whether the suit property is a joint family property or a separate property, the lower Appellate Court ought to have considered the same by itself and the remand is unnecessary. Admittedly, the parties have let in evidence and marked all the documents necessary and relevant for the adjudication of the suit. In such circumstances, the lower Appellate Court could have considered the documents and evidence and given a finding with respect to the nature of the property, instead of remanding the same to the trial Court.

5. In the light of the above, without touching upon the merits of the case, this Court is inclined to direct the lower Appellate Court to decide the appeal on the available documents and evidence including the question whether the suit property is a joint family property or it is a separate property of the first defendant.

6. Accordingly, the order of remand passed by the lower Appellate Court, Salem is set aside and the appeal is remanded back to the lower Appellate Court for consideration and disposal. Considering the fact that the suit is of the year 2003, the lower Appellate Court is directed to dispose of the appeal, as expeditiously as possible, however, not beyond 31.07.2017.

7. With the above observations and direction, this Civil Miscellaneous Appeal is disposed of accordingly. No costs.

Sd/-

Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

To

1. The II Additional District and Sessions Judge,  
Salem

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Additional Sub Judge, Salem.

3.The Record Keeper,  
VR Section,  
High Court, Madras.

+1 cc to Mr.K.Selvaraj,advocate,sr.18493

nm(co)  
krd 18/4

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