



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2017

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THE HONOURABLE MRS.JUSTICE G.R.SWAMINATHAN

C.M.A(MD)No.632 of 2016

and

CMP.(MD)No.6813 of 2016

1.S.Palanisamy

2.P.Suseela

... Appellants/Respondents/Defendants

Vs.

M.Manivel

... Respondent/Appellant/Plaintiff

PRAYER:- Civil Miscellaneous Appeal filed Order XLIII Rule 1(a) of Civil Procedure Code, to set aside the judgment and decree dated 26.10.2015 made in A.S.No.20 of 2014, on the file of the Principal District Judge, Trichirappalli, remanding back the judgment and decree dated 02.04.2014 in O.S.No.1071 of 2009 on the file of the Ist Additional District Munsif at Trichirappalli.

For Appellants	: Mr.K.Baalasundharam
For Respondent	: Mr.R.Sundar Srinivasan

J U D G M E N T

The defendants have filed this Civil Miscellaneous Appeal questioning the order of remand made by the First Appellate Court. The respondent herein filed O.S.No.1071 of 2009, on the file of the Ist Additional District Munsif, Trichirappalli, seeking the relief of permanent injunction. The said suit was dismissed by the Ist Additional District Munsif, Tiruchirappalli on 02.04.2014, on the ground that correlation between the documents filed by the plaintiff and the suit property was not established. Aggrieved by the dismissal of the suit, the plaintiff filed A.S.No.20 of 2014, on the file of the Principal District Judge, Trichirappalli.

2.During the pendency of the appeal, the plaintiff filed I.A.No.197 of 2014, seeking to adduce additional evidence. I.A.No.287 of 2014, was also filed for appointing an Advocate Commissioner to identify the property. The learned Principal District Judge took up both the Interlocutory applications along with the main appeal. The First Appellate Court came to the conclusion for arriving at a just decision in this matter, the additional evidence will have to be received. The matter was remanded to the file of the Trial Court after setting aside the



judgment and decree passed by the Trial Court. The learned Trial Judge was also directed to appoint an Advocate Commissioner to localise the property. Aggrieved by the same, the defendants have filed this present appeal.

3.The learned counsel appearing for the appellant would contend that the power of remand was not properly exercised.

4.The learned counsel appearing for the respondent relied on a recent decision of the Hon'ble Supreme Court rendered in Civil Appeal No.5540 of 2017 (J.Balaji Singh Vs. Diwakar Cole & others). The Hon'ble Supreme Court has held that once the first appellate court allowed an application under Order 41 Rule 27 of Civil Procedure Code and took on record the additional evidence, it would be justified in setting aside the judgment and decree of the Trial Court and remanding the matter by taking recourse to the power conferred under Order 41 Rule 23(A) of Civil Procedure Code.

5.In the present case also, it is seen that the First Appellate Court rightly allowed the application filed under Order 41 Rule 27 of Civil Procedure Code. The plaintiff's case is that the vacant site measuring 1440 square feet is comprised in Old S.F.No.342, which measures an extent of 5 acres and 72 cents. According to the plaintiff, it would be corresponding to T.S.No.28 and in support of this, the plaintiff placed reliance on Ex.A3 and Ex.A4. But, the Trial Court came to the conclusion that the said documents, did not establish any correlation between the old S.F.No.342 and T.S.No.28. In order to sustain his plea of correlation, the plaintiff wanted to mark Ex.A6 and Ex.A7. Ex.A6 is the rough patta, while Ex.A7 is the survey sketch. The First Appellate Court, after going through both the documents, came to the conclusion that they are absolutely essential for arriving at a just decision in this matter.

6.The power to permit production of additional evidence in the First Appellate Court has to be exercised for arriving at a just decision in the matter. If the First Appellate Court requires any document to be produced to enable it to pronounce the judgment or for any other substantial cause it allows such evidence or documents to be produced. The exercise of this power has nothing to do with the vigilance or lack of it on the part of the litigants. In this case, the First Appellate Court has given convincing reasons for the reception of additional evidence.

7.In the facts and circumstances of this case, once the application under Order 41 Rule 27 was allowed, the natural corollary is only to set aside the judgment and decree of the Trial Court and remand the matter to the Trial Court. In my considered opinion, the first appellate court rightly exercised its power.



8.I see no reason to interfere with the order impugned in this appeal. This Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To,

- 1.The learned Principal District Judge,
Trichirappalli.
- 2.The 1st Additional District Munsif Court,
Trichirappalli.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.K.Baalasundharam, Advocate SR.No. 90823
+1cc to M/S.R.Sundar Srinivasan, Advocate SR.No. 90436

C.M.A (MD) No.632 of 2016
30.11.2017

tsg

JM/MR/SAR 3/02.01.2018/3P/6C