

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3576 of 2013 and
MP.No.1 of 2013

Ramar ...Appellant/Plaintiff
Vs.
Manickam ...Respondent/Defendant

Civil Miscellaneous Appeal has been filed against the decree and judgment dated 22.10.2013 made in A.S.No.22 of 2012 on the file of the Subordinate Judge Court at Sangagiri, remanding back O.S.No.91 of 2004 to the District Munsif Court, Sangagiri for fresh disposal.

For appellant : Mr.A.Murugan
For Respondents : Mr.N.Manokaran for R1

J U D G M E N T

The plaintiff/appellant filed a suit for partition and separate possession in O.S.No.91 of 2004 . The trial court has framed appropriate issues and also passed a preliminary decree in favour of the plaintiff/appellant.

2 Aggrieved over the same, the defendant/respondent has preferred an appeal before the lower appellate court in A.S.No.22 of 2012. The lower appellate court considering the judgment of the trial court has framed the following two issues for consideration:

(1) whether the plaintiff is entitled to the relief of partition and permanent injunction? and

(2) whether the decree and judgment of the trial court is sustainable or not?

3 While considering the above two points, the lower appellate court has come to the conclusion that the trial court has failed to consider the issue as to whether the suit is maintainable for partial partition and for non joinder of parties. The lower appellate court has found that though the request for additional written statement was rejected, it has been relied on by the trial court. Further the issue regarding partial partition was not decided and hence remanded the matter back to the trial court for deciding the issue of partial partition.

4 Aggrieved over the decision of the lower appellate court, the plaintiff has preferred the above civil miscellaneous appeal. According to the learned counsel for the plaintiff/appellant, the trial court has infact decided the issue as to whether the suit is bad for partial partition or not and answered the issue in favour of the plaintiff. But, the lower appellate court without considering the judgment of the trial court in proper perspective has held that the issue was not decided.

5 It is true that the issue was not specifically framed, but, there is enough evidence adduced by both sides on that aspect. Considering the oral and documentary evidence, issue as to whether the suit is bad for partial partition, was decided by the trial court. Even assuming it is not decided, the lower appellate court ought to have considered the available evidence and decided the matter on merits, if required after taking additional evidence in this regard. But an order of remand is not sustainable.

6 In such circumstances, this court is of the considered view that the order passed by the lower appellate court is not sustainable in law and accordingly set aside. The matter is remanded back to the lower appellate court for taking a decision on merits on the available materials and by taking additional evidence, if required.

7 In the result, the civil miscellaneous appeal is disposed of and the lower appellate court is directed to decide the appeal within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

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Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The Subordinate Judge Court, Sangagiri

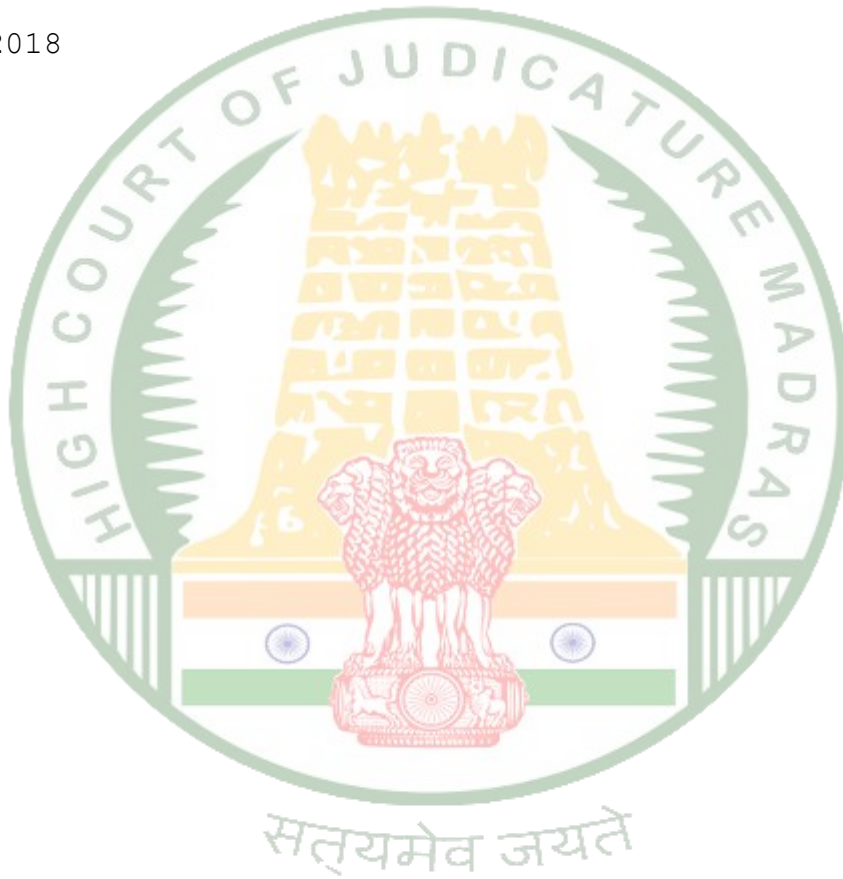
2. The District Munsif Court, Sangagiri

+lcc to Mr.A.Murugan, Advocate sr.no.15088

+lcc to M/s.N.Manokaran, Advocate sr.no.15109

C.M.A.No.3576 of 2013 and
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