



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI
CMA(MD) No.1343 of 2011

WEB COPY

1.Banumathy
2.Parthiban
3.Shanthi
4.Suseela

.. Appellants/Respondents/
Defendants

-Vs-

1.Srinivasan
2.Narayanan

.. Respondents/Appellants/Plaintiffs

PRAYER: Civil Miscellaneous Appeal - filed under Order 43 Rule 1 Clause(u) of the Code of Civil Procedure 1908 against the order of Remand dated 29.09.2010 in A.S.No.3 of 2010 on the file of the learned District Judge, Sivagangai remanding the judgment and decree in O.S.No.47 of 2008 dated 23.07.2009 on the file of the Sub Court, Devakkottai.

For Appellant : Mr.R.Sundar Srinivasan
For Respondents : Mr.A.L.Kannan
for Mr.V.R.Shanmuganathan

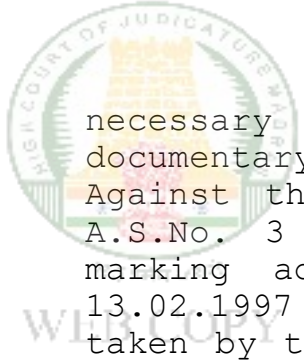
J U D G M E N T

The appellants are the defendants in O.S.No.47 of 2008 and the respondents in A.S.No.3 of 2010. The respondents filed the suit for partition of the suit schedule properties into six shares and allotted 1/6th share each to them. According to the respondents, A.C.T. Raju Chettiar married their mother Sivagami Aachi as his second wife in the year 1979 and the said Raju Chettiar and their mother lived as husband and wife and the respondents were born in the wedlock. Their father died intestate on 16.09.2007. The appellants have taken away cash, gold and jewelries belonging to Raju Chettiar and they have not given any share in the movable properties. They prevented the respondents from meeting their father when he was in death bed. The respondents, as sons of Raju Chettiar, are entitled to have equal share in the suit property along with the appellants.

2. The second appellant filed written statement and the same was adopted by the appellants 1, 3 and 4. They denied marriage between Raju Chettiar and Sivagami Aachi and that they were living as husband and wife. They also denied that the respondents were born to the Raju Chettiar through Sivagami Aachi.

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3. Based on the above pleadings, the trial court framed



necessary issues and considering the pleadings, both oral and documentary evidence let in by the parties dismissed the suit, Against the order of dismissal, the respondents/plaintiffs filed A.S.No. 3 of 2010. The respondents filed I.A.No.67 of 2010 for marking additional documents i.e the deed of Muchalika dated 13.02.1997 executed by A.C.T.Raju Chettiar and the photo jointly taken by the respondent's mother Sivagami Aachi and Raju Chettiar. According to the respondents, the said documents were traced only at the time of filing of the appeal. They are necessary documents to prove their case. The respondents also prayed that the suit may be remanded to the trial court to give an opportunity to the respondents to prove the said documents.

4. The appellants resisted the same by filing counter and contended that those documents are fabricated one and the respondents have not given any reason for not filing the said documents at the time of filing of the suit.

5. The learned first Appellate Judge, considering the averments in the affidavit and counter affidavit, held that those documents are necessary to decide the issue in the suit and allowed the application. The learned First Appellate Judge, in view of the facts that the appellants are claiming that those documents are fabricated one and accepting the request of the respondents to remand the matter to the trial court to prove the documents and to give an opportunity to the appellants to rebut the said evidence, set aside the judgment and decree of the trial court and remanded the suit to the trial court with a direction to the trial court to dispose of the suit on merits and in accordance with law after providing opportunity to the parties to establish their case in accordance with law.

6. Against the said order of remand, the present appeal is filed.

7. Heard the learned counsel appearing for the appellants and the respondents and perused the materials on record.

8. The first Appellate Court has to decide the appeal on merits based on the materials on record. If the materials on record are not sufficient to decide the issue, the first Appellate Court may remand the suit to the trial court for fresh disposal on merits. The first Appellate Court can also frame necessary issues to decide the issue on merits and direct the trial court to record the evidence and return the same along with its findings. The first Appellate Court has power to receive the additional documents, if necessary, to decide the issue and can remand the suit to the trial court giving an opportunity to prove the additional documents filed by the parties.

9. In the present case, the respondents have filed two documents in the appeal, which, according to them, are necessary to decide the issue on merits. According to the appellants, those



documents are fabricated documents.

10. The first Appellate Court, considering the documents filed by the respondents, held that those two additional documents and exhibits already marked would support to the respondents for their case in the suit. The appellants are disputing that these documents are fabricated one for the purpose of claim of the respondents. In such circumstances, the first Appellate Judge has set aside the judgment of the trial court to give an opportunity to the respondents as well as opportunity to the appellants to rebut evidence of the respondents. This remand cannot be said that the first Appellate Judge has mechanically ordered remand and has not appreciated the facts in proper perspective.

11. As far as the additional documents being filed in the first Appellate Court, the first Appellate Court has power to receive the same as per Order 41 Rule 27 C.P.C. Once additional documents are permitted to be filed, the party, who produced such documents, must prove the same and opposite party must be given an opportunity to rebut the same.

12. For the above reason only, the first Appellate Court remanded the matter to the trial court. There is no error in the said judgment warranting interference by this Court.

13. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-I)

CM
To,

1.The District Judge, Sivagangai

2.The Sub Judge, Devakkottai.

3.The Record Keeper, (2 COPIES)

V.R. Section, Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Sundar Srinivasan, Advocate in SR No.81856

+1cc to Mr.V.R.Shanmuganathan, Advocate in SR No.82253

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