

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
15.11.2019	13.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.1731 & 1732 of 2004

and

C.M.P.Nos.9451 & 9452 of 2004

C.M.A.No.1731 of 2004

1.Thimakka
2.Sambakka
3.Muniappa
4.Narayanappa @ Narayana ... Appellants/Appellant/Defendant

vs.

1.Gowramma
2.Rathinamma
3.Venkatalakshmma
4.Thimarayappa
5.Muniraju
6.Kempamma ... Respondents/Respondents/Plaintiffs 2 to 7

C.M.A.No.1732 of 2004

1.Thimakka
2.Sambakka
3.Muniappa ... Appellants/Appellant/Plaintiff

vs.

1.Gowramma
2.Rathinamma
3.Venkatalakshmma
4.Marappa
5.Bodiappa
6.Venkatesappa
7.Thimarayappa
8.Muniraju
9.Kempamma ... Respondents/Respondents/Defendants 2 to 10

WEB COPY

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, against the Judgment and decree dated 24.07.2003 made in A.S.Nos.23 & 24 of 2001 on the file of the Sub Court, Hosur and reversing the Judgment and Decree dated 25.06.2001 made in O.S.Nos.362 & 372 of 1996 on the file of the District Munsif Court, Hosur.

For Appellants
in both

: Mr. V.Sharath Chandran for
Mr.V.Ragavachari

For R1 to R6
(In CMA.No.1731/2004)

For R1 to R3, R7 to R9
(In C.M.A.No.1732/2004): Mr.J.Hariharan for
Mr.V.Nicholas

For R4 to R6 : No Appearance
in C.M.A. 1732/2004

C O M M O N J U D G M E N T

By this common order, both the appeals are being disposed. The appellants and the respondents are the respective parties in O.S.No. 362 of 1996 and 372 of 1996 respectively.

2. O.S.No.362 of 1996 was filed by the respondents to partition the suit schedule property while O.S.No.372 of 1996 filed by the appellants herein for declaration and injunction. Both the suits were filed before the District Munsif Court, Hosur (Trial Court).

3. The trial court passed a preliminary decree dated 25.06.2001 in O.S.No.362 of 1996 filed by the respondents and dismissed. O.S.No.372 of 1996 filed by the appellants. The appellant preferred A.S.Nos.23 & 24 of 2001 before the Sub Court, Hosur.

4. By the impugned judgement and decree, the Subordinate Judges Court, Hosur (the Lower Appellate Court) has remanded the case back to the Trial court for a fresh disposal of dispute between the appellants and the respondents.

5. The Lower Appellate Court has held that the Trial Court has not framed the correct issues and has therefore framed the following additional issues in both suits and remanded the case back to the Trial Court.

O.S.No.362/1996 :

1. Whether the plaintiff has proved that Thimmarayappa died on 05.04.1978 are mentioned in Ex.P1?

2. Whether the plaintiff has legal rights to claim partition under settlement deed dated 24.02.1953 Ex.P2 and Ex.P3?

3. Whether the plaintiff has proved the identity of the girl children in Ex.P2 and P.3? Whether the plaintiff's have prove that the 3rd plaintiff- Rathinammal and 4th plaintiff- Venkatalakshamma were born to the said Thimmarayappa and his wife Thimmakka?

4. Whether the defendants are correct in stating that the 1st plaintiff Muniamma, 2nd plaintiff Gowramma, 2nd defendant Sambamma are the three daughters who alone have right over the property as per Exs.P2 and P.3?

5. Whether the defendants are correct in stating that the property is not in joint possession whether after lapse of 40 years, plaintiffs can claim rights over the suit property?

6. Whether the defendants have legally proved there was an adverse possession over the suit property?

7. Whether the defendants are correct in stating that settlement deed in Exs.P2 and P.3 (sham and nominal) were not acted upon?

8. It is the contention of the appellant that the lower appellate court erred in remanding the case back for a fresh reconsideration of the dispute.

O.S.No.372/1996 :

1. Whether the plaintiffs' are correct in stating that Thimmarayappan died in March 1956 through due to typographical error the year of death was given as 1951?

2. Whether the first defendant Thimmakka has legal right to execute deed in respect of suit property on 29.06.1996 in favour of 2nd and 3rd plaintiff?

3. Whether the plaintiffs' contention that Thimmarayappa has adopted the third plaintiff Muniappa as a Illaatum son-in-law is legally or not?

4. Whether the contention of the defendant that Thimmarayappa died on 05.04.1978 not during March 1956 is correct or not?

5. Whether the contention of the defendant that Thimmarayappa had executed a gift settlement deed in favour of first plaintiff, second plaintiff and defendants, is correct or not?

6. Whether the contention of the defendant that the first plaintiff, second plaintiff, fourth defendant and ninth defendant were the successor to the suit property and whether they were entitled to share in the settlement deed dated 24.12.1953?

6. It is the contention of the learned counsel for the appellants that the lower Appellate Court erred in remanding the case to the Trial Court ignoring the well reasoned decision of the lower court in O.S.Nos.362 of 1996 and 372 of 1996 even though it is the appellant who had challenged the common Judgment and decree dated 25.06.2001 passed by the Trial Court.

7. It was submitted that the power to remand the case cannot be allowed to fill in the lacuna. The appellate court should have passed judgment based on the evidence on record instead of remanding the case back to the trial court.

8. The point for determination in the present appeal is whether the lower appellate court was justified in remanding the case back wholesale in the facts and circumstances of the present case. The proposition of law that the Appellate Courts have limited power to remand case back to the Trial court is well settled and should not be resorted in a casual manner. The Honourable Supreme Court has time and again held that the power of the appellate court to remand the case back to the trial court is limited and should not be resorted in a casual manner as held in the following decisions of the courts:-

i) Balasubramania Iyer v. Subbiah Thevar and another, AIR 1965 Mad 417.

ii) Purushottam Reddy vs. Pratap Steels Ltd., (2002) 2 SCC 686 at page 694,

iii) Kannathal and 4 others Vs. Arulmighu Kanniammal Karuppasamy Thirukoil, Pothanur Chettipalayam, Coimbatore, rep. by its Executive Officer, A. Kalimuthu, Chettipalayam, Coimbatore and other (2007) 2 CTC 49

iv) Rathnasamy Mudaliar (Died) and 2 others. Vs.
Rasu, 1999 SCC OnLine Mad 846

9. Heard the learned counsel for the appellants and the respondents.

10. The Lower Appellate Court has found that the lower Court has not framed the issues correctly and has therefore remanded the case back to the trial Court by setting set aside respective Judgment and Decrees passed by the Trial Court to pass fresh Judgment and decree in terms of the issues framed by the Lower Appellate Court.

11. The Lower Appellate Court has come to a definite conclusion that the issues framed by the trial Court were not correct and has therefore taken up itself the task of framing the issue and referred the case back to the trial Court for retrial. I do not find any reason to interfere with the impugned order passed by the first Appellate Court as the issued would require fresh consideration in the light of the issues framed by the Lower Appellate Court.

12. Consequently, this Court is inclined to uphold the impugned Judgments and decrees passed by the learned Subordinate Judge, remanding the case back to the trial Court. The learned District Munsif Court, Hosur, is directed to dispose of O.S.Nos.362 & 372 of 1996 as expeditiously as possible, preferably, with a period of one year from the date of receipt of a copy of this order. Since the suits are of the year 1996, both the parties shall co-operate for speedy disposal of the suit before the trial court.

13. In view of the above, both civil miscellaneous appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkd

To

1.The Subordinate Judge, Hosur.

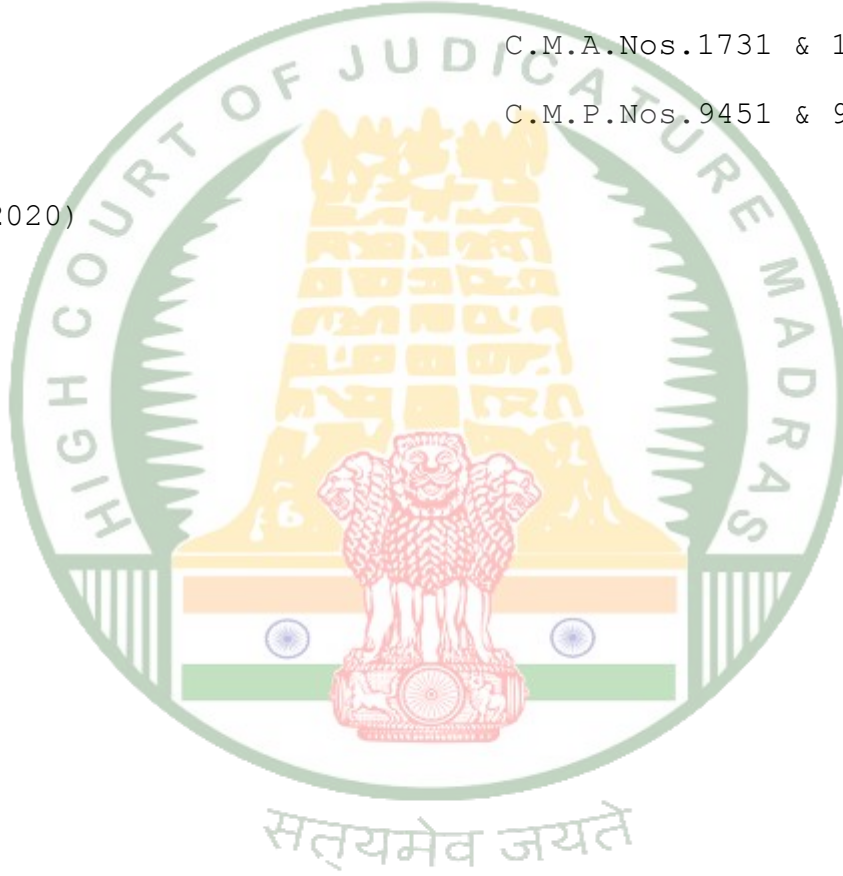
2.The District Munsif, Hosur.

+2 Ccs to Mr.V.Nicholas, Advocate sr 103766, 103768

+1 CC to Mr.V.Ragavachari, Advocate sr 103819.

C.M.A.Nos.1731 & 1732 of 2004
and
C.M.P.Nos.9451 & 9452 of 2004

RSV(CO)
SP(23/07/2020)



WEB COPY