

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	26.11.2019
Pronounced On	06.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1452 of 2010

and

M.P.No.1 of 2010

Rasipuram Vidyamandir Association,
rep.by its President,
Rasipuram Taluk, Namakkal District.

...Appellant/1st Respondent/Plaintiff

vs

1.Karunanidhi
2.Balasundaram
3.Viswanathan

..Respondents 1 to 3/Appellants/2 to 4 Defendants

4.G.Jagadeesan ..4th Respondent/1st Defendant/2nd Respondent

6. The District Registrar (Societies)
rep its District Registrar,
Trichy Road, Namakkal Town ..5th Respondent/3rd Respondent/
5th Defendant

Common Prayer: Civil Miscellaneous Appeals filed under Order 43 Rule 1(u) of Civil Miscellaneous Appeal, to set aside the Judgment and Decree dated 14.07.2009 made in A.S.No.49 of 2008 on the file of the Subordinate Judge's Court at Rasipuram remanded back the judgment and decree dated 01.12.2004 made in O.S.No.248 of 2004 on the file of the District Munsif Court, Rasipuram.

For appellant : Mr.Krishna Prasad. R for
M/s.Sarvabhauman Associates

For R1 to R3 : M/s.S.Uma Maheswari

R4 & R5 : Not ready in Notice

J U D G M E N T

The appellant is aggrieved by the impugned judgement and decree dated 14.07.2009 passed by the Subordinate Judge's Court, Rasipuram in A.S.No.49 of 2008.

2.By the impugned judgement and decree dated 14.07.2009, The Subordinate Judge's Court, Rasipuram has partly allowed the appeal in A.S.No.49 of 2008 filed by the respondents herein by remanding the case back to the Trial Court to pass a fresh judgement and decree in O.S.No.248 of 2004 filed by the appellant herein.

3.The appellant had filed O.S.No.248 of 2004 before the District Munsif Court, Rasipuram to declare the judgment and decree dated 14.06.2001 passed in O.S.No.1 of 2001 as null and void and not binding on the appellant association. It was the case of the appellant that the said decree in O.S.No.1 of 2001 was obtained by playing a fraud on the court in a collusive proceeding between the respondents herein without making the appellant a party to be said proceeding.

4.The trial court by its judgement and decree dated 01.12.2004 in O.S.No.248 of 2004 had earlier decreed the suit as prayed for by the appellant. Aggrieved by the aforesaid judgment and decree, the respondents herein filed A.S.No.49 of 2008. In the said proceeding before the I Appellate Court, the respondents filed I.A.Nos.72 and 73 of 2008 for introducing additional documents and for framing additional issues.

5.The I Appellate Court dismissed I.A.No.72 of 2008 for introducing additional documents. At the same time, the 1st Appellate Court allowed I.A.No.73 of 2008 for framing additional issue. The issue framed by the I Appellate Court would read as under:-

"Whether defendants No. 2-4 were duly inducted as members of the plaintiff association?"

6.The 1st respondent who was the 2nd defendant in the above suit has since deceased. Though on the last occasion the case was adjourned to implead the legal representatives of the 1st respondent/2nd defendant, no steps have been taken so far. When the case was listed for hearing on 26.11.2019, it was mentioned that there is no necessity to implead the legal representatives of the deceased 1st respondent/2nd defendant. Recording the same, the case was heard. There is no necessity to adjourn the case further to implead the legal representatives.

7.Heard learned counsel for the appellant and the contesting respondents namely 2nd to 4th respondents who are the 3rd, 4th and 1st defendants in O.S.No.248 of 2004. The only point for determination in the present appeal is whether the I Appellate Court was justified in remanding the case back for de novo consideration in the above facts and circumstances of the case or whether the I Appellate Court could have disposed the case on the merits.

8.It is noticed that the case pertains to membership to the appellant Association. The learned counsel for the appellant submits that O.S.No.1 of 2001 was a collusive suit between the respondents without making the appellant association party to the said proceeding and a compromise decree was passed on 14.06.2001. It is therefore submitted that the trial court had rightly decreed the suit as prayed for by the appellant and there was no necessity to remand the case back to the trial court for de novo consideration. Learned counsel for the appellant submitted that the powers of the appellate court to remand the case to the trial court is very limited and the superior courts have often frowned upon such practice of remanding the case back to the trial court without considering the case on the merits. In this connection, the learned counsel for the appellant has relied on the following decisions of the court:-

- i. Palanisamy @ Uthayarpalayanthan vs Apparsamy, 2002-4-L.W.276.
- ii. Arockiaprakash vs Rangasamy, 2007-4-L.W.298.
- iii. Rathnasamy Mudaliar (Died) and 2 Others vs Rasu, 2002-2-L.W.540.

9. Per contra, the learned counsel for the 1st to 3rd respondents (defendants in O.S.No.248 of 2004) who were the appellants in A.S.No.49 of 2008 submits that the order passed by the Subordinate Court, Rasipuram was well reasoned and requires no interference.

10. The Learned Counsel for the Respondent further submits having framed the issue which is relevant to decide the lis between the parties, the 1st appellate court has correctly remanded the case back to the trial court.

11. The learned counsel for the 1st to 3rd respondents further submits that the Appellate Court could itself disposed the Appeal in terms of Order 41 Rule 25 of CPC, the 1st to 3rd respondents would be losing an opportunity of appeal and therefore prayed for dismissal of appeal. In this connection, the learned counsel for the 1st to 3rd respondents relied on the decision of the Hon'ble Supreme Court in Shanthi Devi vs Daropti Devi and Others, 2007 (1) CTC 262.

12. The I Appellate Court has remanded the case back to the Trial Court in the light of the additional issues framed by the trial court to allow the respondents to let in additional

evidence before the trial court. The parties herein had also accepted for determination of the additional issue. However, while recording the same the court has remitted the case back to the Trial Court for de novo consideration of the issues and has set aside the judgement and decree of the trial court passed on 01.12.2004 in O.S.No 248 of 2004.

13. In my view, wholesale remand by setting aside the impugned judgement and decree dated 1.12.2004 in O.S.No. 248 of 2004 was not permissible. Under the scheme of Civil Procedure Code and the law settled by the Honourable Supreme Court as followed by this Court, the I Appellate Court could have exercised the powers vested with it under Order 41 Rule 25 of CPC instead of remanding the case back to the trial court for fresh de novo consideration. It is noticed that the I Appellate Court had prescribed 3 months time for the trial court to decide the case afresh pursuant to the impugned order. The appellant though was justified in challenging the order of the I Appellate Court, has contributed to the enormous delay in resolution of the dispute between them in as much as the trial court was required to pass final judgement and decree within a period of 3 months from the date of the impugned order. By filing the present appeal, the appellant has contributed to the delay in enquiry for over a period of 10 years due to pendency of the present appeal. Needless to say, the case pertains to power struggle between the office bearers of the appellant association. The conduct of the appellant making sure that the present appeal is not taken up for hearing for a period of 10 years by keeping the position intact is not keeping in line with the relevant provisions of the Tamil Nadu Societies Registration Act 1975 and the rules made thereunder.

14. Be that as it may, since the law on the subject of remand is well settled, the impugned order remanding the case wholesale to the trial court is modified by directing the trial court to take additional issues and to try such issues and return the evidence to the I Appellate Court within a period of 3 months from receipt of this order. On such exercise being taken by the Trial Court namely District Munsif Court, Rasipuram, the Subordinate Judge's Court, Rasipuram shall pass final order in A.S.No.49 of 2008 within a period of 6 months from receipt of this order.

15. Since the longevity of the dispute has been prolonged by the appellant by filing the present appeal, I am of the view the appellant should be also directed to pay cost. Appellant is therefore directed to a sum of Rs.5000/- to the High Court Attached Mediation and Conciliation Centre within a period of 2 weeks from the date of receipt of a copy of this order. The proof of compliance of this order shall be filed before the trial court. The trial court shall thereafter proceed further in compliance with the above observations.

16.The present Civil Miscellaneous Appeal is allowed with the above observations. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Rasipuram.

2.The District Munsif, Rasipuram.

3.The Section Officer, V.R.Section,
High Court, Madras.

4. The Mediation and Conciliation Centre,
High Court, Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.102108

+1cc to Mr.C.Jagadish, Advocate SR.No.102372

C.M.A.No.1452 of 2010
and
M.P.No.1 of 2010

MR(CO)
GMY(22/07/2020)

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