

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2019
PRONOUNCED ON : 19.08.2019

CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No. 204 of 2016
and
C.M.P. No.4315 of 2016

K.Kasambu (Deceased)

1. K.Ravi

2. Valli

3. K.Subramaniam

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

Vs.

1. Tamilarasi ...1st Respondent/Appellant/Plaintiff

2. The Chairman,
Slum Clearance Board,
Chennai - 600 005.

...2nd Respondent/4th Respondent/
5th Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 31.03.2015 in A.S.No.15 of 2015, on the file of the 3rd Additional City Civil Court, Chennai reversing the judgment and decree dated 08.10.2014 in O.S. No.359/2012, on the file of the II Assistant City Civil Court, Chennai.

For Appellants : Mr. R.Neethi Perumal

For R1 : Mr. P.Chandrasekar

For R2 : Mr. S.Prabhu

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 31.03.2015, passed in A.S.No.15 of 2015, on the file of the 3rd Additional Judge, City Civil Court, Chennai reversing the judgment and decree dated 08.10.2014, passed in O.S. No.359/2012, on the file of the II Assistant Judge, City Civil Court, Chennai.

2. The second appeal has been admitted on the following substantial questions of law:

(i) Whether the lower Appellate Court can remand the case for further evidence when there was no plea of the appellant/plaintiff in the Appeal to that effect?

(ii) Whether the lower Appellate Court was right in holding that though two new defendants were added in the subsequent suit in O.S. No.359/2012, the same was not hit by res judicata?

(iii) Whether the lower Appellate Court was right in holding that since the earlier suit filed by the plaintiff has been dismissed without a full fledged trial, there was no bar for filing the suit in O.S. No.359/2012?

3. Considering the scope of the challenge made by the appellants namely, the defendants 2 to 4 and when the challenge is made only focusing against the order or remand made by the first Appellate Court, in my considered opinion, it is unnecessary to dwell into the facts of the case put forth by the respective parties in detail.

4. Suffice to state that the first respondent/plaintiff had preferred the suit against the appellants and the second respondent as well as the deceased Mrs.K.Kasammbu for the reliefs of declaration, partition and permanent injunction on various grounds. The abovesaid suit laid by the first respondent/plaintiff had been resisted by the defendants 1 to 4 as well as the fifth defendant by filing separate written statements. Based on the pleas put forth by the respective parties, it is found that the parties went for trial and the trial Court had framed issues as regards the entitlement of the plaintiff for the reliefs of declaration, partition and permanent injunction as prayed and accordingly, it is found that the parties had tendered evidence with reference to the same. Accordingly, it is further noted that the plaintiff has examined herself as PW1 and marked Exs.A1 to A18 on her side. On the side of the defendants, it is found that no oral and documentary evidence has been adduced.

5. Based on the abovesaid materials placed on record and the submissions made, the trial Court was pleased to dismiss the plaintiff's suit. Impugning the same, the plaintiff has preferred the first appeal. The first Appellate Court, by way of the impugned the judgment and decree, had decided to remand the matter for further evidence to the trial Court and accordingly, disposed of the first appeal. Challenging the same, the present second appeal has been preferred.

6. As above pointed out, the reliefs sought for by the plaintiff has been stoutly repudiated by the defendants and in such view of the matter, the plaintiff, being aware of the defence raised by the defendants, had also chosen to proceed with the trial and adduced evidence in support of her case both oral and documentary. The defendants, however, decided not to adduce any evidence in support of their version. Accordingly, when the parties had proceeded with the trial with the abovesaid materials on record and the trial Court has deemed it fit that the materials placed on record do not lend support to grant the reliefs prayed for by the plaintiff as claimed by her, resultantly, dismissed the plaintiff's suit. In such view of the matter, it is evident that the materials available on record are more than sufficient for determining the issues involved between the parties.

7. In the light of the abovesaid factors, when it is not even the case of the plaintiff that she is required to adduce further evidence in the matter in support of her case before the first appellate Court and when as abovenoted, the materials available on record are sufficient to determine the issues involved in the matter, in the light of the above position, as rightly put forth by the appellants' counsel, the first appellate Court is not justified to remit the matter back to the trial Court for enabling the plaintiff to adduce further evidence in support of her case. When the plaintiff is aware of her case and the reliefs prayed for in the suit and also the defence raised by the defendants challenging the reliefs prayed for by her and the plaintiff had also tendered evidence in support of her case, in such view of the matter, the first appellate Court is found to be not justified in remitting the matter back to the trial Court for enabling the plaintiff, in particular, to adduce further evidence in support of her case.

8. On a reading of the judgment of the trial Court, it is found that the trial Court has analysed the issues involved in the matter and the materials available on record with reference to the same, determined that the plaintiff has miserably failed to establish her case and resultantly, dismissed the plaintiff's suit. When the trial Court has analysed the abovesaid materials and come to the conclusion that the plaintiff has not established her case, in such view of the matter, the first appellate Court is found to be not justified in remitting the matter back to the trial Court, particularly, for enabling the plaintiff to adduce further evidence in support of her case, when no such plea has been, in particular, put forth by the plaintiff before the first appellate Court. The order of remand made by the first appellate Court by way of the impugned judgment for enabling the parties to adduce further evidence

cannot be legally sustained and on that ground alone, the impugned judgment and decree deserves reversal.

9. As regards the other points raised and determined by the first appellate Court, when the first appellate Court had chosen to remit the matter back to the trial Court and when the abovesaid determination of the first appellate Court is not legally sustainable, in such view of the matter, I deem it fit to set aside the findings and conclusions made by the first appellate Court in respect of the other points involved in the matter and resultantly, deem it necessary to remit the matter back to the first appellate Court with a direction to the first appellate Court to dispose of the first appeal on merits based on the materials available on record as per law.

10. In the light of the abovesaid discussions, the first substantial question of law formulated in the second appeal is accordingly answered in favour of the appellants and against the first respondent/plaintiff. As regards the other substantial questions of law raised in the matter, since the matter is being remitted back to the first appellate Court for a fresh consideration of the issues involved between the parties on merits on the basis of the available materials, in my considered opinion, the other substantial questions of law raised need not be answered.

11. The counsel for the respondent, in support of his contention, placed reliance upon the decision reported in 2010-1-LW601 (Balamani and Ors. Vs. S.Balasundaram).

12. In the light of the abovesaid discussions, the judgment and decree dated 31.03.2015, passed in A.S.No.15 of 2015, on the file of the 3rd Additional Judge, City Civil Court, Chennai are set aside and the matter is remitted back to the first appellate Court with a direction to the first appellate Court to dispose of the first appeal as per law based on the available materials on record and accordingly, the second appeal is allowed. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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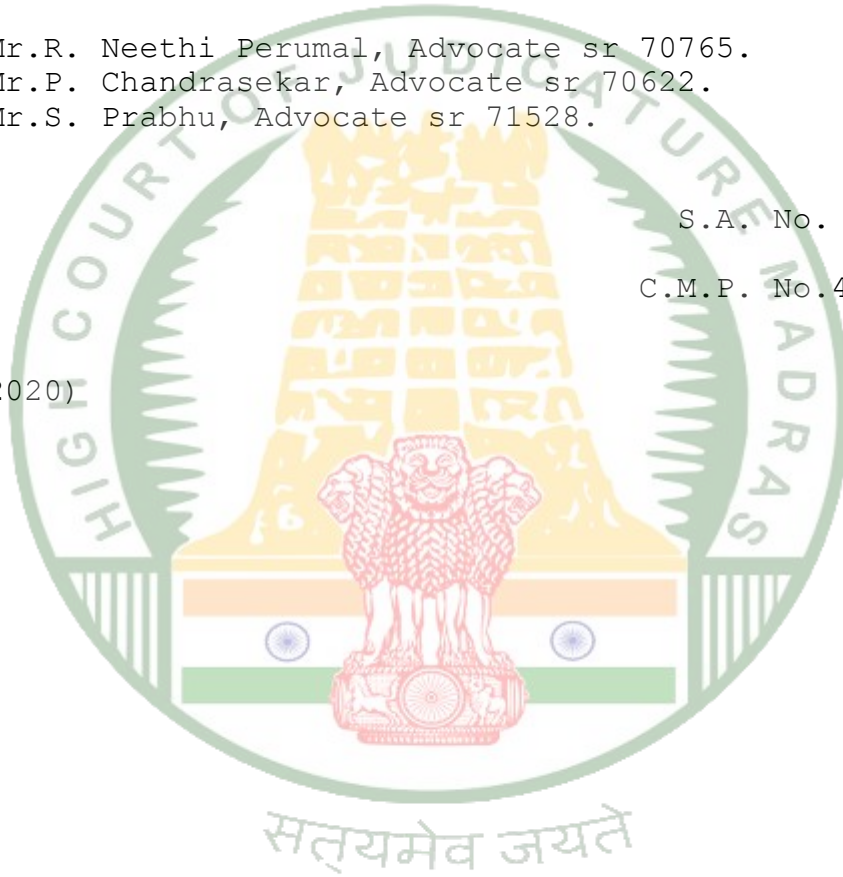
To

1. The 3rd Additional Judge,
City Civil Court, Chennai.
2. The II Assistant Judge,
City Civil Court, Chennai.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1 CC to Mr.R. Neethi Perumal, Advocate sr 70765.
+1 CC to Mr.P. Chandrasekar, Advocate sr 70622.
+1 CC to Mr.S. Prabhu, Advocate sr 71528.

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and
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RJI (CO)
SP(03/02/2020)



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