

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	07.11.2019
Pronounced On	20.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2272 of 2006

and

M.P.No.1 of 2006

1.Jeevamani

2.Harlees ... Appellants/Respondent/Defendant

vs

Gnanamani @ Ellmmal ... Respondent/Appellant/Plaintiff

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the order of remand in judgment and decree passed in A.S.No.19 of 2002 dated 15.03.2006 on the file of Sub Court, Arani remanding the judgment and decree in O.S.No.80 of 1999 on the file of Additional District Munsif Court, Arni dt.15.2.2002 and direct the Subordinate Judge to dispose the appeal on merits.

For appellants : Mr.P.Satheesh Kumar
For Respondent : Mr.S.Parthasarathy

J U D G M E N T

The appellants are the defendants in O.S.No.80 of 1999 filed by the respondent/plaintiff. The said suit was filed for partition and for mandatory injunction wherein the appellant had filed their written statements. The suit O.S.No.80 of 1999 was dismissed by the Additional District Munsif Court, Arani vide judgment and decree dated 15.02.2002.

2.Aggrieved by the same, the respondent preferred A.S.No.19 of 2002. By a judgment and decree dated 15.03.2006 in A.S.No.19 of 2002, Sub Court, Arani set aside the judgment and decree passed earlier on 15.02.2002 in O.S.No.80 of 1999 and the case was remitted back to the Additional District Munsif Court, Arani for fresh reconsideration of the issues and thereby permitting the respondent to produce evidence and documents.

3.The said remand was made pursuant to an affidavit filed by the respondent/plaintiff stating that the

respondent/plaintiff had filed xerox copy of the certain documents. These documents according to the respondent/plaintiff would establish that the property purchased by the respondent/plaintiff was through one Baggiammal wife of John who was said to be the co-owner of the disputed property which according to the appellants was also purchased by them from other two brothers namely Samuel and Manickam and late John. The learned counsel for the appellants submits that the learned Subordinate Judge erred in remanding back the case cock stock and barrel and was therefore, contrary to the provisions of Order 41 Rule 21 of CPC.

4.The learned counsel for the appellants/defendants submits that the order of remand cannot be allowed as a matter of routine to plug the holes in the evidence when the respondent / plaintiff had failed to establish the same before the Additional District Munsif Court, Arani. The learned counsel for the appellants submits at best the Sub Court, Arani can frame issues and refer the same to Additional District Munsif Court, Arani take evidence and refer the case back to pass final orders in appeal.

5.In this connection, the learned counsel for the appellants relies on the following decisions:-

- i.P.Purushottam Reddy and Another vs Pratap Steels Ltd., (2002) 2 SCC 686.
- ii.Bachahan Devi and Another vs Nagar Nigam, Gorakhpur and Another, (2008) 12 SCC 372.
- iii.Satish Kumar Gupta and Others vs State of Haryana and Others, (2017) 4 SCC 760.

6.Heard the learned counsel for the appellants and the respondent.

7.The learned counsel for the respondent submits that the impugned judgment is well reasoned and requires no interference. In any event he submits that the Court may remit the case back for recording the evidence in terms Order 41 Rule 21 of CPC and the direct the Additional District Munsif Court, Arani to send the same to the Sub Court, Arani.

8.I have perused the impugned order and records of the case and considered the arguments advanced by the learned counsel for the appellant and the respondent.

9.The Appellate Court under Order 41 Rule 25 of CPC may, if necessary, frame issues and refer the case for trial to the Court from whose decree the appeal was preferred and direct the trial court to take the additional evidence required and such court is expected to try such issues and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within a period as may be fixed by the Appellate Court or extended of time.

10.I am of the view, the case ought to have been remitted back to the Additional District Munsif Court, Arani after framing issues for recording evidence by the Additional District Munsif Court, Arani in terms of the Order 41 Rule 25 of CPC. Therefore, the impugned Judgment of the Sub Court, Arani is set aside and A.S.No.19 of 2002 is restored to file. The case is accordingly remitted back to the Sub Court, Arani to frame issues for the aforesaid purpose.

11.Since the dispute is of the year 1999, the Sub Court, Arani may expedite the proceedings by issuing suitable directions to the Additional District Munsif Court, Arani to record the additional evidence for it to pass final order in the appeal A.S.No.19 of 2002.

12.Therefore, the present Civil Miscellaneous Appeal stands allowed with the above observations by way of remand. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Arni.
- 2.The Additional District Munsif Court, Arni.
- 3.The Section Officer, V.R.Section,
High Court, Madras.

+1 cc to Mr.P.Satheesh Kumar, advocate,sr.96759

+1 cc to Mr.S.Parthasarathy, Advocate,sr.96915

sr(co)
krd 7/10

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