

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.4379 of 2019

and

C.M.P.No.24920 of 2019

1.Ganesamoorthy
2.G.Anbazhagan
3.G.Devanathan

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

.Vs.

1.M.Anbazhagan
2.Karunamurthy

... 1 & 2 Respondents/Appellants/
Plaintiffs

3.The Collector,
Cuddalore District,
Cuddalore.

4.The Tahsildar,
Panruti.

5.The President,
Sathipattu Panchayat.

... 3 to 5 Respondents/
4 to 6 Respondents/ 4 to 6 Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of C.P.C., against the order and decree dated 09.02.2019 in A.S.No.45 of 2014 on the file of the 1st Additional District and Sessions Court, Cuddalore, remanding the appeal to the Trial Court. (Sub Court, Panruti, O.S.No.105 of 2010, dated 25.06.2014)

For Appellants : Mr.D.Ravichander

For Respondents : Mr.S.Jaganathan
Government Advocate (CS)

JUDGMENT

Since no adverse orders have been passed by this Court, the matter is taken up at the admission stage itself, without issuing any notice to the respondents.

2. The Appellants herein are the defendants 1 to 3 in the suit in O.S.No.105 of 2010 on the file of the Subordinate Court, Panruti. The defendants 1 to 3 filed the present Civil Miscellaneous Appeal against the judgment and decree dated 09.02.2019 passed in A.S.No.45 of 2014 on the file of the First Additional District and Sessions Court, Cuddalore, who has remanded the matter to the Trial Court, for deciding the issue afresh on various grounds.

3. The learned counsel for the appellants/defendants 1 to 3 submitted that the Appellate Court ought not to have remanded back the appeal to the Trial Court afresh, as it is against the facts and law. The Appellate Court would have allowed the plaintiffs/respondents to let in evidence before it, since the Appellate Court is having powers to decide the said issue and examine the witnesses. He has further contended that the appeal is continuation of original proceedings under Order 41 Rule 23, 23-A and 25 and it will not be an impediment for the Appellate Court to take further evidence. However, the Appellate Court remanded back the matter, which is bad in law. The Appellate Court had remanded back the matter in a casual and routine manner and ought to have seen the benefit which the party accrued from the judgment of the Trial Court cannot be taken easily away by virtue of order of remand. It is further contended that number of judgments have shown that the matter cannot be remanded back to the Trial Court, instead, the Appellate Court ought to have taken the additional evidence on its own and exercise its discretion.

4. The brief facts leading to the filing of the Civil Miscellaneous Appeal are as follows :

(i) Originally the plaintiffs/ respondents 1 and 2 herein filed a suit in O.S.No.105 of 2010 seeking declaration that the suit 'A' schedule property is a public pathway, restraining the defendants, their men, agent and any person claiming through them from putting up any construction in the 'A' schedule property and without any interference in the usage of the suit property by the plaintiffs. Earlier the 1st plaintiff filed W.P.No.2081 of 2005 for a similar relief and this Court has held that the issue was covered by Section 91 C.P.C and dismissed the same by giving liberty to approach the appropriate forum namely Civil Court. After the said order the above suit has been filed by the plaintiffs.

(ii) The case of the plaintiffs is that in the suit 'A' schedule property is poramboke property belonging to the Government and there exists a cart track (vandipattai) from time immemorial. The revenue records would show that the vandipattai is a public pathway and the same has to be maintained for the usage of public, but, the Government officials have not preserved it, as such, many persons have encroached the same. It is further stated that the 1st plaintiff is owning 'B' schedule property and residing in the eastern extreme in S.No.185/5B and there exists a rice mill in the western portion, known as Viswanathas Rice Mill, which is in existence for more than 35 years and these are the ancestral properties of the 1st plaintiff. The 2nd plaintiff is owning the property in S.No.185/5A, which is described as 'C' schedule property. It is further stated that 'A' schedule property is the only access to the 'B' and 'C' schedule properties and there had been no obstruction. On 20.6.2005, the defendants 1 to 3/appellants started digging foundation in the cart track just opposite to the plaintiffs properties and constructed number of shops to close the plaintiffs access to the properties in 'B' and 'C' schedule. Such obstruction is illegal and the same is causing nuisance to the public and the plaintiffs. The entire villagers will be affected, if the same is continued. The defendants 4 to 6/respondents 3 to 5 are bound to prevent the same and it is their duty to do the same. The 6th defendant, who was the President of the Panchayat has not interfered immediately and stopped the process. Hence, the plaintiffs alleged that there is a collusion between the authorities and the defendants and prayed for declaration, permanent injunction and mandatory injunction.

5. A written statement was filed by the defendants 1 to 3 contending that the entire 'A' schedule property is not a cart track or vandipattai, even though, there is a cart track in the portion of the 'A' schedule property. The defendants have put up a grocery shop and they are running the same for more than 30 years and there is no obstruction by the defendants and also there is no nuisance by them by running the grocery shop. They also denied that the 1st plaintiff is the owner of the 'B' schedule property and he is residing in S.No.185/5B though, the rice mill is situated in the said survey number. In S.No.185/6A, the 'B' schedule property is concerned the 1st plaintiff has got neither title nor possession. The entire S.No.185/6 is the ancestral property of the defendants family and same has not been divided and denied that the property belongs to the 1st plaintiff.

6. The appellants/defendants herein stated that the portion occupied by them is 'A' schedule property and also stated that

they have constructed a brick built thatched roof petty grocery shop, which is more than 15 feet away from east of cement road, put up by the Panchayat and the same is ruined. The defendants have reconstructed the same by terraced building, whereas the thatched roof in the front portion remains the same. It is further stated that prior to filing of the suit, there is no large construction or row of shops and it is not causing any obstruction to the village people. It is further stated that there exists an old Tamarind tree, aged 75 years in between the public pathway and the defendants shop and the defendants family are reaping the fruits of the said tree from time immemorial and that the shop is not causing any obstruction and disturbance to the general public. The appellants and the respondents are related each other i.e. Pangali and only due to jealous and previous enmity, suit has been filed. It is further stated that the 1st plaintiff levied tax to the third defendant, when he was the President of the Panchayat and now it is alleged that he is an encroacher of the suit property, which is classified as road poromboke.

7. The Trial Court after considering the materials available on record dismissed the suit mainly on the ground that the documentary evidence Exs.A1 to A5 produced by the plaintiffs are not relating to 'A' schedule property and since no evidence has been produced to show the existence of public pathway and its extent it could not lead to a conclusion that the defendants 1 to 3 have obstructed the plaintiffs' access and from using the said path way and had dismissed the same. Aggrieved by the said judgment and decree the respondents/plaintiffs herein had filed an appeal before the Appellate Court on various grounds. The Appellate Court considered the pleadings and the materials available on record came to the conclusion that the said respondents/plaintiffs have not produced any documents namely F.M.B sketch and 'A' register by way of filing an interlocutory application in I.A.No.52 of 2016, which was allowed by the said Court. While considering the said materials, the lower Appellate Court was of the view that when the matter has to be decided only by marking the said documents and a chance has been given to the parties concerned to let in evidence, both the parties can be at liberty to adduce before the Trial Court oral evidence and mark the said documents, subject to proof, relevancy and law and decide the matter within a period of four months and directed the Trial Court to dispose of the case afresh. Aggrieved by the said order, the present appeal has been filed by the appellants/defendants 1 to 3.

8.The learned counsel for the appellants submitted that the matter has been decided by the Trial Court and prima facie case has not been made by the plaintiffs, the suit has been dismissed for non production of materials. The Appellate Court has

remanded back the matter to the Trial Court to dispose of the case afresh is erroneous and also stated that when the Court itself has got powers, it can do so instead of remanding the matter.

9. On perusal of the materials available on records and after hearing the learned counsel for the appellants herein, this Court is of the view that the plaintiffs have not produced any documents to show that they are the owner of the property, which is the subject matter of the suit. Admittedly, the said land is a Government Poromboke land and its extent has not been known to this Court. The road has been laid in the cart track or vandipattai to be utilized by the village people. The contention of the appellants is that there is a grocery shop, which has been running for more than 30 years without any obstruction, which itself situated beyond 15 feet away from the said road and in between, there is a Tamarind tree. I have gone through the materials such as F.M.B sketch and other revenue records produced by the Revenue Authorities. Whether there exists a pathway or grocery shop or whether any encroachment being made in any way from the road have to be established only by adducing oral and documentary evidence. The F.M.B sketch and the 'A' register prove the topographic of the said place based on which it has to be established, who is the owner of the property and who is holding the title. The Appellate Court itself can decide the issue instead of remanding back the same to the trial Court. On perusal of the documents it is found that F.M.B.Sketch and 'A' register have not been produced by the respondents/ plaintiffs in the appellate stage. It is to be only decided whether such documents can throw any light over the right of the parties. The Court below can decide the issue and put an end to this. It is proved that the plaintiffs have encroached the same, the authority concerned can look into the matter.

10. The learned counsel for the appellants relied upon the judgment in the case of Uttaradi Mutt Vs. Raghavendra Swamy Mutt reported in 2019 (3) CTC 799 and submitted that remanding back the case to the trial Court by the Appellate Court is not proper and the Appellate Court itself can take additional evidence and decide the issue. The defendants sought for letting in additional evidence at the appellate stage and instead of allowing the said application, the appeal was allowed and the case was remanded back to the trial Court. When additional documents were sought to be filed at the appellate stage, while so, the appellate Court itself has jurisdiction to permit the party to the proceedings to adduce additional evidence before it for full, complete and effective adjudication of the proceedings.

11. In the case on hand, at the appellate stage, certain

documents were sought to be marked by the defendants during the pendency of the appeal. The documents sought to be marked are the F.M.B.sketch and 'A' register for the purpose of proving the title of the 'A' schedule property whether it is a public pathway or Government poromboke or it is a road poromboke. Even though, there is no reason assigned by the plaintiffs as to why these documents were not marked before the Trial Court, the Trial Court can decide the issue in the interest of justice by considering these vital documents, which are public documents. If needed, Advocate Commissioner can also be appointed to visit the suit property. Therefore, the appellate Court is right in remanding the matter back to the Trial Court to pass orders afresh and it is also made clear that the lower Appellate Court has granted four months time to dispose of the suit.

12. In the interest of justice, it would be appropriate for the trial Court to appoint an Advocate Commissioner to find out whether the said property is encroached upon by the defendants or any other person and further the Court below can dispose of the matter within a period of four months from the date of receipt of a copy of this order. The Trial Court can conduct trial afresh on the materials produced by the parties, after remand. It is made clear that the Revenue Authorities are also bound to produce the necessary documents before the Trial Court to establish the possession and ownership of the land before the trial Court.

13. Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The 1st Additional District and Sessions Judge,
Cuddalore.

2. The Sub Judge, Panruti.

C.M.A.No.4379 of 2019

SSD(CO)
CS/10/11/2020