

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.147 of 2007

and

M.P No.1 of 2007

1.Lakshmi
2.Gowrishankar
3.Saraswathi

..Appellants/Defendants

Vs.

1.Lakshmi
2.Radhamani

..Respondents/Plaintiffs

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1-U of CPC, to set aside the judgment and decree in A.S.No.17 of 2006 dated 16.10.2006, on the file of the Principal District Judge, Erode remanding O.S No.676 of 2000 dated 11.08.2004, on the file of the 2nd Additional Sub Judge, Erode.

For Appellants : Mr.T.Karthik Srinath

For Respondents: No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 06.10.2006 passed in A.S No.17 of 2006.

2. The defendants are the appellants in the present appeal. The suit is for partition and it was decreed in favour of the plaintiffs/respondents. The defendants filed A.S No.17 of 2006. The first Appellate Court remanded the matter back for re-trial for the purpose of giving findings for all the issues separately and to dispose of the suit within a period of three months. Challenging the said judgment, the present appeal is filed.

3. The contention of the appellants is that the trial Court itself considered all the issues and delivered a judgment on merits. Whiles, there is no other reason whatsoever to remand the matter to the trial Court for re-consideration. Thus, the first Appellate Court has committed

an error in sending back the matter for re-trial.

4. Remanding the matter back to the original Court may be an easy way out for the Appellate Courts, however, such a procedure in the absence of any sound principles cannot be appreciated by the High Courts. The Courts are expected to be cautious while remanding the matter. When the Courts are vested to the power to decide the matter on merits in all circumstances, such Courts are expected to exercise its power in order to provide complete justice to the parties who are all approaching the Court of law. Contrarily, remanding the matter back would lead to prolongation and would cause injustice on account of long delay in delivering the judgment. Speedy disposal of the cases are imminent as citizen of our great nation are slowly loosing trust on the judicial system more specifically in the matter of civil litigations. The litigants are mostly frustrated on account of long pendency of civil cases and appeals before the Courts. In most of the civil litigations, the person who instituted the suit may not be alive to see the light of the same. When the matter is decided, the practice of prolongation of the civil litigation is to be cut short by disposing of the matter in the speedy manner and by avoiding such unnecessary remands and unwanted adjournments. The practice of taking adjournments on flimsy grounds are to be declined by the Court in all circumstances. The Courts are expected to be vigilant in disposing of the matter especially when the civil suits are pending for long years.

5. Order 41 Rule 33 of CPC enumerates Power of Court of Appeal. Accordingly, the Appellate Court shall have the power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

6. Section 107 C.P.C., enumerates the powers of the appellate Court. The appellate Court shall take additional evidence or require such evidence to be taken. Even under Order 41 Rule 24 of the Code of Civil Procedure, where evidence on record is sufficient, the appellate Court may determine the case finally. The provision states that where the evidence upon the record is sufficient to enable the appellate Court to pronounce judgment, the appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the appellate

Court proceeds.

7. Order 20 Rule 5 of the Code of Civil Procedure contemplates the Court to state its decision on each issue. The provision reads that the suits in which issues have been framed, the court shall state its finding or decision, with the reasons there for, upon each separate issues, unless the finding upon any one or more of the issues is sufficient for the decision of the Suit. Therefore, it is not necessary that all the issues framed by the trial Court are to be discussed elaborately. In all circumstances when the first issue which is vital to continue the suit proceedings are decided in either way, then the Court can arrive a conclusion for the purpose of deciding the suit itself.

8. For example in the suit for specific performance, agreement for sale is a vital document which is relied upon for the purpose of granting the relief of specific performance. In the absence of the sale agreement, it is not possible for the Courts to grant relief of specific performance. Thus, if the sale agreement is found to be null and void or fraudulent or fabricated and the factum is established with strong evidence, the trial Court is empowered to decide the suit on such issues without going into the further discussion with reference to the other issues of readiness and consideration etc. Such a procedure is already approved by the Code of Civil Procedure. Therefore, the first Appellate Court is wrong in arriving the conclusion that the trial Court must decide all the issues elaborately even after arriving at a conclusion that the suit sale agreement is invalid and fabricated.

9. In view of the facts and circumstances of the case, the first Appellate Court is empowered to decide the issues on merits even by framing additional issues or by examining documents or witnesses. Thus, it is not necessary to remand the matter back to the trial Court which would cause great prejudice to the great interest of the parties.

10. Accordingly, the judgment and decree dated 16.10.2006 passed in A.S No.17 of 2006 is set aside and the present Civil Miscellaneous Appeal No.147 of 2007 stands allowed. No costs. The matter is remanded back to the first Appellate Court for disposing the first appeal on merits and in accordance with law and by affording opportunities to all the parties concerned. Consequently, the connected Miscellaneous Petition is closed.

11. The parties to the appeal are restrained from seeking unnecessary adjournments. Adjournments are to be granted only on genuine grounds and by recording reasons. Adjournments on flimsy grounds are to be rejected readily by all Courts. The

parties cannot be given privilege of getting adjournments for their benefit in order to prolong and protract the issues.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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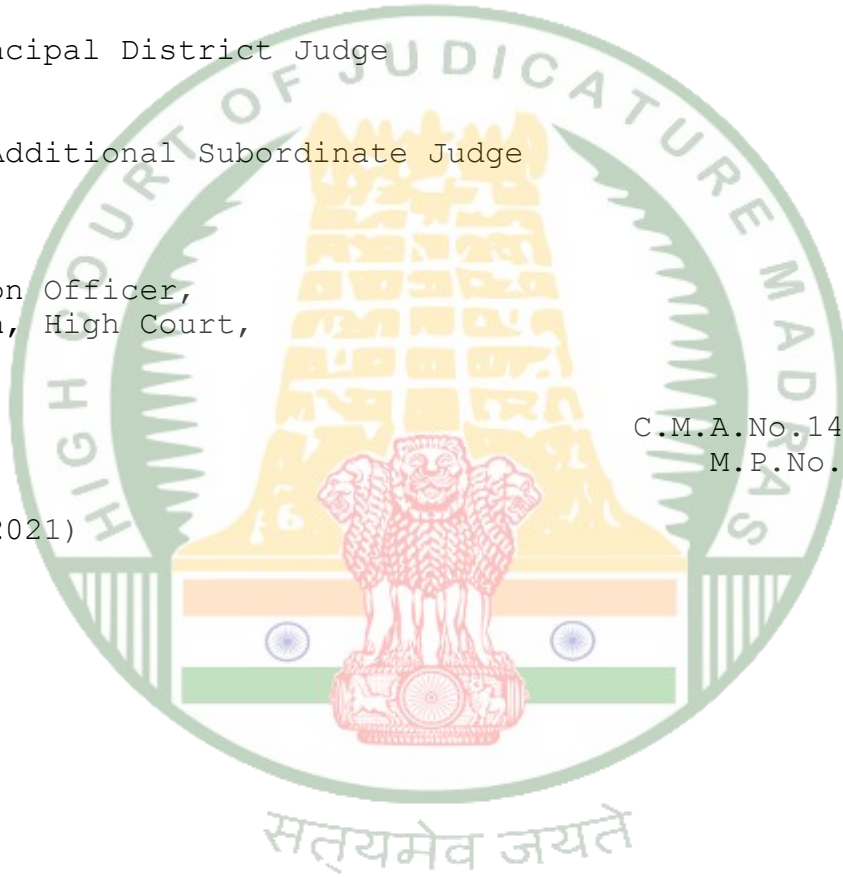
To

- 1.The Principal District Judge
Erode.
- 2.The II Additional Subordinate Judge
Erode.

Copy to:
The Section Officer,
VR Section, High Court,
Madras.

MG (CO)
CB(26/02/2021)

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