

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.Nos.615 & 616 of 2006
and
C.M.P.Nos.2526 and 2527 of 2006

A.Dharmalingam ..Appellant in both petitions

vs.

1.S.Kanagaraj ...R1 in C.M.A.No.615 of 2006

2.S.Selvaraj ...R2 in C.M.A.No.615 of 2006

3.Deivathal ...R3 in C.M.A.No.615 of 2006

4.A.Pappal ...R4 in both petitions

5.A.Senthilkumar ...R5 in both petitions

6.A.Poongodi ...R6 in both petitions

7.M.Subbe Gounder ...R1 in C.M.A.No.616 of 2006

8.Selvaraj ...R2 in C.M.A.No.616 of 2006

9.Kanagaraj ...R3 in C.M.A.No.616 of 2006

COMMON PRAYER : Civil Miscellaneous Appeals are filed under Order 43 Rule 1(4) of the Civil Procedure Code, against the judgment and decree dated 09.11.2004 passed in A.S.Nos.5 & 6 of 2003 on the file of the learned Additional District Judge(Fast Track Court No.4), Tirupur reversing the judgment and decree dated 27.04.2000 passed in O.S.Nos.631 of 2005 & 615 of 1995 on the file of the learned District Munsif, Palladam.

For Petitioner : Mr.V.R.Appaswamee
in both petitions for Mr.S.K.Rakhunathan

For Respondent : Mr.S.Kaithamalaikumaran
in C.M.A.No.615 of 2006 for RR1 & 2
Mr.S.Kolandasamy for R3
No-appearance for RR4 to 6

For Respondent : Mr.S.Kaithamalaikumaran
in C.M.A.No.616 of 2006 for RR1 to 3
No-appearance for RR4 to 6

C O M M O N O R D E R

These two Civil Miscellaneous Appeals are filed against the common judgment dated 09.11.2004 passed in A.S.Nos.5 & 6 of 2003.

2. Two suits were instituted and the appellant herein instituted O.S.No.615 of 1995 and the respondent instituted O.S.No. 631 of 2005. The trial Court passed a common judgment on 27.04.2000 decreeing O.S.No. 615 of 1995 and O.S.No.631 of 2005 was dismissed. Against the common judgment, both the plaintiffs in the suits filed A.S.Nos.5 & 6 of 2003. The First Appellate Court considered the issues and passed a common order on 09.11.2004 remanding the matter back to the trial Court.

3. The finding of the first appellate Court for remanding the matter is that "no issue was framed for adverse possession. On perusal of the records, it reveals, unfortunately, in both the suits, there was no issue framed for adverse possession since this issue is a legal issue and which have to be elaborately dealt with. But since there was no issue framed by the Lower Court nor in the Appellate Court (Sub-Court), and hence the parties were not given an opportunity to lead their evidence and to prove adverse possession". The first Appellate Court arrived a conclusion that there is no justification in rendering the judgment and ignoring the above vital legal issue. Under these circumstances, the suits were remanded back to the trial Court with a direction to frame the additional issue for adverse possession and decide the matter by providing an opportunity to all the parties.

4. Order XLI Rule 23 of C.P.C enumerates that "where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in this case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand."

5. The scheme of the provisions for remand enunciated under Rule 23 and 23 A of Order XLI is not complete without reference to the provision contained in Rule 24 of Order XLI that enables the Appellate Court to dispose of a case finally without a remand if the evidence on record is sufficient; notwithstanding that the Appellate Court proceeds on a ground entirely different from that on which the trial Court had proceeded. Thus, Rule 24 is also to be kept in mind, while deciding the appeal, whether the first Appellate Court is right in remanding the matter back to the trial Court for re-trial and adjudication. Rule 24 shall be invoked when the evidence and the documents available are sufficient to dispose of the matter, then the proper course for an Appellate Court is to follow the mandate of Rule 24 of Order XLI CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a re-trial is considered necessary that the Appellate Court shall adopt the course of remanding the case. It is to be understood that an order of remand may not be passed in a routine manner. An unwarranted order of remand will elongate the litigation and result in inconvenience. Repeatedly approaching the trial Court will frustrate the mind set of the litigants and the longevity would cause further expenditure. Therefore, this Court is of the considered opinion that as far as possible, remanding the matter is to be avoided, if the evidence or documents available on record are sufficient to decide the case. The First Appellate Court is expected to decide the issues on merits and pass final orders. In the absence of any materials on record to decide those issues, then alone, the first Appellate Court is empowered to adopt course contemplated for remanding under Order XLI Rule 23 and Rule 23(A) of C.P.C.

6. In the present case, the finding of the First Appellate Court reveals that in both suits, no issue was framed regarding the adverse possession and the parties were not provided an opportunity to file their evidence and documents in respect of the issue of adverse possession. Thus, adjudication of the suits are absolutely incomplete, therefore, remand is warranted. In the absence of any evidence and documents regarding the adverse possession, the first Appellate Court may not be in a position to decide the issue finally. Thus, this Court is of the considered opinion that the reasons for remand furnished in the common judgment of the first Appellate Court is candid and fulfills the components of Order XLI Rule 23 of C.P.C. Accordingly, the judgment and decree dated 09.11.2004 passed in A.S.Nos.5 & 6 of 2003 are confirmed and consequently, the Civil Miscellaneous Appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

7. The trial Court is directed to dispose the suit as expeditiously as possible preferably within a period of 10 months from the date of receipt of a copy of this Order. 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 in limine 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 III)

//True Copy//

Sub Assistant Registrar

ssb

To

1. Additional District Judge(Fast Track Court No.4), Tirupur.
2. District Munsif, Palladam.

Copy to
The Section Officer,
VR Section,
High Court,
Madras 104

+2cc to M/s.S.Kaithamalai Kumaran, Advocate, S.R.No.

C.M.A.Nos.615 & 616 of 2006

VSN II (CO)
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