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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM

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

C.M.A.No.2 of 2015
and
M.P No.1 of 2015

M.Velusamy

...Appellant / Plaintiff

Vs.

1.Mylathal

2.A.Maragathamani @ Bagyammal

3.Aruchamy

4.Jothimani

5.Rathamani

6.Velumani

7.Bhuvaneswari

Ramathal (died)

8.K.M.Natarajan

9.M.Subramaniam

10.N.Selvaraj

11.Lakshmi

12.S.Kavitha

13.Rukmani

...Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 of CPC, against the Fair and final orders dated 16.09.2014 made in A.S.No.3 of 2012 on the file of V Additional District Judge and Sessions Court, Coimbatore remanding the case to O.S.No.315 of 2006 dated 20.10.2011 on the file of the Principal Subordinate Judge, Coimbatore.



For Appellant : No appearance

For Respondents : Batta due

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J U D G M E N T

The fair and final order dated 16.09.2014 made in A.S.No.3 of 2012 on the file of V Additional District Judge and Sessions Court, Coimbatore, remanding the case to O.S.No.315 of 2006 on the file of the Principal Subordinate Judge, Coimbatore, is under challenge in the present civil miscellaneous appeal.

2. The case on hand is remanded for the purpose of receiving additional written statement and reply statement, if any, by the plaintiff by giving an opportunity to produce the release deed dated 25.09.1980 and proof of the same in the manner known to law and to question the same by way of cross examination of the witnesses. The remand order passed by the first appellate Court in A.S.No.3 of 2012 is questioned by the appellant herein merely on the ground that the respondents were provided with an opportunity before the Trial Court and such opportunity was not utilised and therefore, the first Appellate Court has committed an error in remanding the matter back.

3. It is contended that under Order 41 Rule 21 of C.P.C., the additional written statement cannot be filed at the belated stage. The Trial Court decreed the suit after an elaborate trial and therefore, remanding the matter for re-trial would cause inconvenience to the parties. The remand would pave way for the respondents to fill up the lacunae in the suit.

4. The suit was instituted by the appellant for partition and for appointment of a Commissioner to divide the properties. The suit was decreed in favour of the appellant. Thus, the defendants filed the first appeal and the first Appellate Court remanded the matter back for filing additional written statement and to provide opportunity.

5. The findings of the Trial Court is relevant to decide the present appeal. The paragraph Nos.15 and 16 of the judgment are extracted hereunder:

"15. After enquiry this Court is satisfied that the appellant had established that the plaintiff



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had executed a release deed dated 25.09.1980 was not within the knowledge of the appellants being the legal heirs of Aruchamy and the plaintiff who had executed the said release deed and the 2nd defendant K.M.Natarajan son of Muthappa Gounder who had also released his share in the property had failed to bring to the knowledge of the appellants. It was argued on behalf of the appellant that the said K.M.Natarajan though released his interest in the property later on due to increasing value of the property wanted to gain the same without any right having released the same in favour of the other co owners of the property. This Court is satisfied that the appellants had complied with condition for the receiving the additional evidence i.e., release deed that was not made available to them despite they had exercise the due diligence and as such the petition filed by the appellant under order 47 rule 27 CPC is allowed.

16. Partition does not create any new right over the parties and however it is only division of property according to the respective shares. When the appellants contends that the plaintiff has no right to claim partition having released the same by executing the release deed it has to be received and since the appeal being the continuation the suit the appellant must be given an opportunity to put forth their defence upon the release deed and hence without going into the merits, the appeal is disposed of with a limited point that in view of allowing the petition for receipt of addition evidence the preliminary decree passed by the lower court is set aside and it was directed to take of the mater afresh with the specific point for consideration that was formulated hereunder:

1. Whether the plaintiff had executed a release deed dated 25.09.1980 and whether it is valid and binding upon him?
2. Whether the plaintiff is entitled for the relief of partition and separate possession of the suit property as prayed for by him?



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Accordingly, the point for consideration was answered in favour of the appellants to the limited extent of setting aside a preliminary decree passed by the lower court in view of allowing the appellants to adduce the additional evidence.

In the result,

- 1.The appeal is allowed without cost.
- 2.The Decree and Judgment of the Trial Court dated 20.10.2011 is hereby set aside.
- 3.The matter is remanded to the Court of Principal Subordinate Judge, Coimbatore for adducing additional evidence by the appellants by receiving the additional written statement and reply statement if any by the plaintiff and by giving an opportunity to produce the release deed dated 25.09.1980 and proof of the same to the manner known to law by giving an opportunity to the plaintiff to question the same by way of cross examination of the witnesses.
- 4.The concerned Trial Court is hereby directed to frame the issue as formulated above and to dispose of the case by himself according to law.
- 5.Both parties are directed to appear before the Court of the Principal Subordinate Judge, Coimbatore on 15.10.2014.

6. In view of the findings cited supra, this Court is of the considered opinion that there is no infirmity as such in the decision arrived by the first appellate Court to remand the matter back for trial. However, the suit is of the year 2006 and therefore, the Trial Court is directed to dispose of the suit as expeditiously as possible and preferably within a period of six months from the date of receipt of a copy of this order. The parties to the suit are directed to cooperate for the earlier disposal of the suit. The Trial Court should decline unnecessary adjournments on flimsy grounds if sought for by the parties to the suit. The adjournments sought are to be granted only on genuine grounds and by recording reasons. Thus, the Trial Court is expected to proceed with the case without granting any unnecessary adjournments either at the instance of the parties or by the Courts.

7. Accordingly, the Judgment and Decree dated 16.09.2014 in A.S.No.3 of 2012 stands confirmed and consequently, the civil



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miscellaneous appeal in C.M.A.No.2 of 2015 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To

- 1.The V Additional District Judge and Sessions Court,
Coimbatore.
- 2.The Principal Subordinate Judge,
Coimbatore.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.2 of 2015
and
M.P No.1 of 2015

CNR(CO)
RVM(16/09/2021)