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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2021

CORAM

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

C.M.A.No.2858 of 2015 and
M.P.Nos.1 & 2 of 2015

Arulmighu Marriamman Temple,
Rep by its Executive Officer,
R.S.No.93/2,
Veerappanchatram, Erode Taluk.

...Appellant/Defendant

Vs.

1.Arukkaniammal

2.V.P.R.Thangamani

..Respondents/Plaintiffs

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of C.P.C., against the judgment and decree of the learned III Additional Subordinate Judge, Erode dated 19.12.2014 passed in A.S.No.82 of 2014, wherein set aside the judgment and decree dated 04.01.2014 passed in I.A.No.725 of 2013 in O.S.No.121 of 2012 and remanded the matter to the Principal District Munsif, Erode.

For Appellant : Mr.Madhan Babu for
Mr.R.Parthasarathy

For Respondents : Mr.A.Sundaravadhanam for R1
Mr.Naveen kumar Murthi for R2

J U D G M E N T

The judgment and decree dated 19.12.2014 passed in A.S.No.82 of 2014, is under challenge in the present civil miscellaneous appeal.

2. The Defendant Temple is an appellant. The suit was instituted by the respondents for mandatory injunction and for permanent injunction. The suit was dismissed by the Trial Court. The respondents instituted an appeal suit in A.S.No.82 of 2014



and the first Appellate Court set aside the judgment and decree passed by the Trial Court and remanded the matter back for reconsideration of the evidence as well as the deposition of witnesses.

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3. The ground merely raised in this appeal is that whether the remand of the matter back to the Trial Court for fresh disposal is in accordance with the provisions or not.

4. The learned counsel appearing on behalf of the appellant mainly contended that the suit was contested and the Trial Court decided the matter on merits and dismissed the plaint. However, the first Appellate Court has committed an error in remanding the matter back instead of deciding the appeal suit on merits.

5. The learned counsel for the appellant further contended that the temple land is occupied by the respondents and they are encroachers as far as the temple lands are concerned. The respondents have further filed a writ petition. The said writ petition was also dismissed by this Court. It is further contended that there is a decree exist in favour of the appellant temple which was confirmed in the second appeal by this Court. Those judgments are also marked as document before the Trial Court, there is no reason whatsoever to remand the matter back and the first Appellate Court ought to have consider the judgment delivered by various Courts for the purpose of ascertaining the rights of the parties. Thus, the appeal is to be allowed.

6. The learned counsel appearing for the respondents states that the first appeal already filed in respect of the other judgment and decree is pending for a long time. The rights of the parties are unable to be crystalized. The Trial Court dismissed the suit by rejecting the plaint and therefore, the first Appellate Court is right in remanding the matter back for re-trial.

7. This Court is of the considered opinion that the Appellate Court is empowered to remand the matter under Order 41 Rule 23 and 23(A) of C.P.C. However, the remand is to be resorted only on exceptional circumstances and not in a routine manner. The Appellate Court must decide the issues on merits and in accordance with law and the appeal suits are to be disposed of. The remand can be made only if the suits are decided on certain preliminary issues and there was no adjudication of all the issues as well as the documents and evidences filed by the respective parties to the litigation. However, it is contended that the issues regarding res judicata alone was considered. In view of the fact that the plaint was rejected on the ground of res judicata, there is no reason for remanding the matter for



re-trial.

8. This being the point advanced by the appellant, this Court is of the considered opinion that the first Appellate Court is well within its powers to decide this point on merits and in accordance with law. If the Trial Court rejected the plaint on the ground of res judicata, then the Appellate Court can very well appreciate the documents and evidences and decide the matter finally instead of remanding the matter back to the Trial Court. Rule 24 Order 41 unambiguously stipulates that the appeal suits are to be decided finally and only on certain limited grounds, the cases can be remanded back to the Trial Court for fresh disposal. Under Section 107 C.P.C., the Appellate Court got powers to accept additional documents and examine the witnesses, if necessary. The appeal suit is a continuation and therefore, the Appellate Court has got all powers to examine the witnesses and accept the additional documents and conclude the appeal suit by affording opportunity to all the parties, on merits and in accordance with law.

9. This being the power conferred on the Appellate Court under the Code of Civil Procedure, the Appellate Courts are expected not to remand the matter unnecessarily. Such remand undoubtedly amount to shifting the responsibility by the Courts and it can never be appreciated by the High Court.

10. Perusal of the findings in the judgment impugned, the same reveals that the Trial Court has failed to consider the documents already submitted along with the plaint and on record as Exhibit A1 to A9 in the main suit, while deciding the petition under Order 7 Rule 1 of C.P.C. The rejection of the plaint on the ground of res judicata ought not to have been allowed as prayed in I.A.No.725 of 2013, before the Trial Court. As the Trial Court had failed to rely only upon the plaint and documents submitted along with it in allowing I.A.No.725 of 2013 and in result dismissing the suit is not correct, as any of the grounds upon which the plaint may be rejected as described under Order 7 Rule 11 of CPC was not proved.

11. When the above said elaborate findings are made by the first Appellate Court, there is no reason whatsoever to remand the matter back for fresh disposal. Even such evidences and documents shall be re-appreciated or revised finding can be given if the first Appellate Court formed an independent opinion with reference to the point of res judicata.

12. The learned counsel for the appellant cited the judgment of the Hon'ble Supreme Court of India in the case of T.Arivanandam Vs. T.V.Satyapal and Another, reported in 1997 4 SCC 467, the Hon'ble Division Bench ruled as under in paragraph



No.5 which is extracted hereunder:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful -not formal--reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C., taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The Trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

13. For all these reasons, this Court is of the considered opinion that the first Appellate Court ought to have considered all the grounds and the evidences placed by the respective parties and dispose of the appeal suit on merits and in accordance with law. The remand without considering the facts and circumstances seems to be inappropriate. Thus, this Court is inclined to consider the appeal.

14. Accordingly, the judgment and decree dated 19.12.2014 passed in A.S.No.82 of 2014 is set aside. The first Appellate Court is directed to hear the appeal suit by affording opportunity to all the parties, if necessary, by accepting the additional documents and examining or cross examining the witnesses and dispose of the same on merits and in accordance with law. The said exercise is directed to be done by the first Appellate Court, within a period of eight months from the date of receipt of a copy of this order. The parties to the appeal suit are directed to not seek unnecessary adjournments on flimsy grounds. The adjournments sought are to be granted only on genuine grounds and by recording reasons.



15. Thus, the present civil miscellaneous appeal is allowed.
No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The learned III Additional Subordinate Judge,
Erode.
2. The Principal District Munsif,
Erode.
3. The Section Officer,
VR Section,
High Court,
Madras - 104.

C.M.A.No.2858 of 2015 and
M.P.Nos.1 & 2 of 2015

GMB (CO)
RGA(13/09/2021)