



the matter only on certain circumstances and the Appellate Court therefore need not remand the matter in routine manner even for appointment of Advocate Commissioner to find out the facts or to clarify certain aspects. It is relevant to consider Rule 24 to Order 41 which stipulates that "where evidence on record sufficient, the Appellate Court may determine case finally.-- 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."

5. Therefore, the scheme of C.P.C., more specifically under Order 41 Rule 23(A) unambiguously enumerates that if the suit is decided on certain preliminary issues, then alone the First Appellate Court may remand the matter back for retrial and fresh adjudication. If the suit is disposed of on merits with reference to the issues framed and considering the documents and evidences, then certain lapses if it is found by the Appellate Court, then, remand may not be required and the First Appellate Court itself is empowered to accept the additional documents or examine the witnesses or frame additional issues and decide the appeal finally.

6. Remand is exception. All appeals are to be decided on merits and in accordance with law. Unnecessary remanding of the matter to the Trial Court is to be averted. Remanding the case would be an easy way out. In some of the cases, it would cause great prejudice to the interest of the parties. Once again driving the parties to the Trial Court for re-adjudication, would cause frustration. Therefore, the Appellate Court always try to dispose of the appeals finally and if necessary, by accepting the additional documents, framing additional issues or by examining the witnesses, by affording opportunity to the parties concerned.

7. A conjoint reading of Rule 23, 23 (A) & 24 of Order 41 brings out the scope of powers to remand, only when the available evidence is not sufficient to dispose of the matter. The proper way for the Appellate Court is to follow the mandate of Rule 24 to Order 41 of C.P.C., and determine the suit finally.

8. This being the principles to be followed, in the present case, the Appellate Court remanded the matter back for appointing Advocate Commissioner for ascertaining certain facts. Such exercise ought to have been done by the Appellate Court itself. In this view of the matter, the Appellate Court has to appoint the Advocate Commissioner, if necessary and thereafter,



if any request is made for submission of additional documents or otherwise, the same also is to be considered with reference to the provisions of C.P.C.

9. Accordingly, the judgment and decree dated 29.11.2018 passed in A.S.No.60 of 2017 is set aside. C.M.A.No.1101 of 2019 stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

10. The appeal suit is remanded back to the First Appellate Court for appointment of Advocate Commissioner or taking of additional evidences, cross examination of the witnesses etc., by affording an opportunity to the parties and dispose of the appeal suit on merits and in accordance with law. The First Appellate Court is directed to complete the said exercise as expeditiously as possible and preferably within a period of six months from the date of receipt of a copy of this order.

11. The parties to the appeal suit are directed not to seek adjournments on flimsy grounds. The adjournments sought are to be granted only on genuine grounds and by recording reasons. Thus, the First Appellate Court is expected to proceed with the case without granting any unnecessary adjournments either at the instance of the parties or by the Courts.

Sd/-
Assistant Registrar(SSA)

//True copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge,
Coonoor, Nilgiris.
- 2.The District Munsif,
Kotagiri, Nilgiris.
3. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Venkidusamy, Advocate SR.No.21307

C.M.A.No.1101 of 2019 and
C.M.P.No.3084 of 2019

CNR (CO)
GMY (19/11/2021)