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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.767 of 2013

and

M.P.No.1 of 2013

1.Dharmaraj  
2.Rangasamy  
3.Periyasamy  
4.Thangamuthu

..Appellants/Respondents/Plaintiff

Vs.

1.Government of Tamil Nadu,  
Represented by  
District Collector,  
District Collector Office,  
Perundurai Road,  
Erode - 11.

... 1<sup>st</sup> Respondent/Appellant/  
1<sup>st</sup> Defendants

2.Sivasubramaniam

... 2<sup>nd</sup> Respondent/5<sup>th</sup> Respondent/  
2<sup>nd</sup> Defendant

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of C.P.C., against the Judgment and decree dated 12.09.2012 passed in A.S.No.63 of 2012 on the file of the Principal Sub Court, Erode remanding back the judgment and decree dated 10.08.2006 in O.S.No.400 of 2005 on the file of I Additional District Munsif, Erode.

For Appellants : Mr.A.Sundaravadhanan

For Respondents : Mr.S.Jagadeesan  
Government Advocate (CS)  
[For R1]  
No appearance for R2

J U D G M E N T

The Judgment and Decree dated 12.09.2012 passed in A.S.No.63 of 2012 is under challenge in the Civil Miscellaneous Appeal on hand.

2. The plaintiff is the petitioner in the present appeal. The suit was instituted for mandatory injunction, directing the 1<sup>st</sup> respondent and the officials to change the Revenue records including Patta, Chitta for the suit property into the name of the plaintiffs within the time limit to be specified by the Court.



3. The defendants in the suit are the State of Tamil Nadu, Represented by the District Collector, Erode and One Mr.Sivasubramaniam. The suit was decreed exparte. Against the exparte decree, the State of Tamil Nadu, represented by the District Collector, filed A.S.No.63 of 2012. The First Appeal was considered by the First Appellate Court and the matter was remanded back for retrial. The said judgment passed in the First Appeal is under challenge in the present Civil Miscellaneous Appeal.

4. Admittedly, the Trial Court passed an exparte decree. The First Appeal was filed against the exparte decree passed.

5. The learned counsel appearing on behalf of the respondent/Government now made a submission that the suit property is a water canal and it is a Public property and therefore, the plaintiffs are the encroachers and therefore, the District Collector filed the First Appeal to set aside the exparte decree.

6. The First Appellate Court remanded the matter for retrial in order to find out whether the suit property is the Water Canal belongs to the Government or the property belongs to the plaintiff. Such an adjudication is imminent in view of the fact that the property right is to be decided with reference to the documents and evidences available. The petitioner herein is the plaintiff in the suit. Therefore, he has to establish his civil right in order to possess the suit property. Based on the exparte decree, the plaintiff cannot claim any right over the suit property. Thus, the First Appellate Court has rightly remanded the matter back to the trial Court for considering all the issues raised between the parties and dispose of the case on merits and in accordance with law. This Court do not find any infirmity in support of the judgment passed by the trial Court, remanding the matter back for re-trial, in view of the fact that the Trial Court passed the exparte decree.

7. This apart, this Court is of the considered opinion that the suit was instituted in the year 2005 and pending for the past more than 15 years. It is a second round of litigation. This being the factum, the trial Court is directed to dispose of the suit as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this judgment. The parties to the Civil Suit are directed to co-operate for the early disposal of the suit. The Courts are expected not to grant unnecessary adjournments. Adjournment on genuine grounds may be granted by recording the reasons. Thus, it is necessary that the suit must be disposed of in a speedy manner.

8. Thus, this Court do not find any acceptable ground for the purpose of considering the relief. Accordingly, the judgment and decree dated 12.09.2012 passed in A.S.No.63 of



2012 stands confirmed and consequently, the Civil Miscellaneous Appeal in C.M.A.No.767 of 2013 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Ist Additional District Munsif,  
Erode.

2.The Principal Subordinate Judge,  
Erode.

Copy To

The Section Officer,  
V.R. Section, High Court,  
Madras.(2 copies)

+1cc to the Special Government Pleader(CS), S.R.No.1366  
+1cc to the Additional Government Pleader(CS), S.R.No. 675

C.M.A.No.767 of 2013

SRA(CO)  
GN(13/09/2021)