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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

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

C.M.A.No.2704 of 2016 and

C.M.P.No.19489 of 2016

Safeel Ahmed Sahib ... Appellant / Respondent / Plaintiff
Vs.

Mohammed Yusuf Sahib ... Respondent / Appellant / Defendant

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, against the Judgment and Decree, dated 23.03.2016 made in A.S.No.12 of 2014 on the file of the Court of the Subordinate Judge, Vaniyambadi, setting aside the Judgment and Decree, dated 28.02.2014, made in O.S.No.141 of 2007 on the file of the Court of the Principal District Munsif-cum-Judicial Magistrate Court, Vaniyambadi and remanding the matter to the trial Court.

For Appellant : Mr.M.V.Krishnan

For Respondent : Mr.E.M.K.S.Siddharthar,
Legal Aid Counsel

JUDGMENT

The plaintiff is the appellant in the present appeal and the suit was instituted for permanent injunction. The suit was decreed in favour of the plaintiff. Thereafter, the defendant filed A.S.No.12 of 2014 before the Subordinate Judge, Vaniyambadi. The first appellate Court remanded the matter back for re-trial on the ground that the trial Court has not framed necessary issues regarding validity of gift deed and title.

2.In fact the suit was contested between the parties and the plaintiff filed documents also. If at all there is any omission regarding the framing of issues by the trial Court, the first appellate Court is well in its power to frame such additional issues and take evidence if necessary and decide the matter finally. Contrarily, on such trivial grounds, the matter cannot be remanded back to the trial Court and in the event of such remand, the same would cause great prejudice to the interest of the parties. In the event of remanding the matter, re-trial is to be conducted by the trial Court and the parties would suffer and again an appeal is to be filed by either of the parties. Thus, the dispute will continue for years together and such practice cannot be appreciated by this Court. The appeal suit



is the continuation of the original suit, therefore the first appellate Court is empowered to frame additional issues, take evidence if there is any omission on the part of the trial Court and decide the issues on merits so as to resolve the dispute between the parties. By remanding the matter, greater hardship is caused to the parties and they will have to once again adjudicate the matter before the trial Court and again file an appeal for the purpose of resolving the disputes. Such repeated proceedings are not preferable. Contrarily, the first appellate Court can fill the gaps if any and decide the issues on merits in order to provide complete justice to the parties.

3. Section 107 C.P.C., enumerates the powers of the appellate Court. The appellate Court shall take additional evidence or require such evidence to be taken. Even under Order 41 Rule 24 of the Code of Civil Procedure, where evidence on record is sufficient, the appellate Court may determine the case finally. The provision states that 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.

4. Order 20 Rule 5 of the Code of Civil Procedure contemplates the Court to state its decision on each issue. The provision reads that the suits in which issues have been framed, the court shall state its finding or decision, with the reasons there for, upon each separate issues, unless the finding upon any one or more of the issues is sufficient for the decision of the Suit. Therefore, it is not necessary that all the issues framed by the trial Court are to be discussed elaborately. In all circumstances when the first issue which is vital to continue the suit proceedings are decided in either way, then the Court can arrive a conclusion for the purpose of deciding the suit itself.

5. For example in the suit for specific performance, agreement for sale is a vital document which is relied upon for the purpose of granting the relief of specific performance. In the absence of the sale agreement, it is not possible for the Courts to grant relief of specific performance. Thus, if the sale agreement is found to be null and void or fraudulent or fabricated and the factum is established with strong evidence, the trial Court is empowered to decide the suit on such issues without going into the further discussion with reference to the other issues of readiness and consideration etc. Such a procedure is already approved by the Code of Civil Procedure. Therefore, the first Appellate Court is wrong in arriving the



conclusion that the trial Court must decide all the issues elaborately even after arriving at a conclusion that the suit sale agreement is invalid and fabricated.

6. Why the powers are conferred on the first appellate Court, is in view of the fact that under order 41 rule 33 of the Code of Civil Procedure, and under Section 107 C.P.C., the appeal suit is the continuation of the original suit proceedings and therefore, all the powers vested on the original Court of jurisdiction may be exercised by the first appellate Court in order to resolve the disputes in a complete manner. This being the principles to be followed, this Court is of the considered opinion that the matters cannot be remanded on certain trivial issues. As far as possible the Courts are bound to decide the matter and pass a final judgment. Remanding of the matter may be an easy way out for the Courts, but this Court is not inclined to appreciate such way of disposal of the cases. Thus in all circumstances, the Courts are bound to consider the issues as a whole and attempt to provide complete justice to the parties. Contrarily by remanding the matter, the parties are made to suffer further and the long pendency would cause denial of justice to the either of the parties. This being the principles to be followed, the judgment and decree dated 23.03.2016 passed in A.S.No.12 of 2014 is set aside and the Civil Miscellaneous Appeal stands allowed. The appeal suit is remanded back to the first Appellate Court for deciding the issues if necessary by framing additional issues and after taking evidence and pass final orders on merits and in accordance with law. The said exercise is directed to be done by affording opportunity to all the parties and preferably within a period of six months from the date of receipt of a copy of this order.

7. 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 readily by all Courts. The parties cannot be given privilege of getting adjournments for their benefit in order to prolong and protract the issues. Thus, the first appellate Court is bound to consider all these aspects and dispose of the cases on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To

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1.The Subordinate Court,
Vaniyambadi, Vellore District.

2.The Principal District Munsif cum Judicial Magistrate Court,
Vaniyambadi.

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The Section Officer
V.R. Section,
High Court, Madras.

+1cc to Mr.M.V.Krishnan, Advocate, S.R.No.1129

C.M.A.No.2704 of 2016 and
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AK(CO)
SB(10/08/2021)