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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.596 of 2016
C.M.P.No.4846 of 2016

1.Prabhakaran

2.Selvam

.. Appellants

.vs.

1.Lakshmi

2.Ashoka

3.Kavitha

4.Abinaya

5.Minor R.Achaya

rep.by her next friend/Father, Y.S.Sivakumar

6.Surendar

7.Latha

.. Respondents

PRAYER :

Civil Miscellaneous Appeal filed under Order-43 Rule-1(U) of C.P.C, against the judgment and decree dated 30.11.2015 passed in A.S.No.67 of 2013 on the file of the II Additional District Judge, Salem reversing the judgment and decree dated 27.02.2013 in O.S.No.256 of 2010 on the file of the Principal Sub-ordinate Judge, Salem.

For Appellants : Mr.DR.P.Jagadeesan

For Respondents : Mr.R.Jayaprakash for RR1 & 2
RR3 to 7-Not ready in notice



O R D E R

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 30.11.2015 passed in A.S.No.67 of 2013 on the file of the II Additional District Judge, Salem reversing the well considered judgment and decree dated 27.02.2013 in O.S.No.256 of 2010 on the file of the Principal Sub-ordinate Judge, Salem.

2. The defendants are the appellants and the respondent filed a suit for partition. The suit was dismissed, against which, the plaintiffs filed an appeal suit in A.S.No.67 of 2013. The First Appellate Court remanded the matter back to the trial Court to examine the contents of Ex.P3 and further consider the additional documents filed by the parties and thereafter, dispose of the suit. Challenging the said order of the remand, the present Civil Miscellaneous Appeal is filed mainly on the ground that the trial Court adjudicated all the documents including Ex.P3 and dismissed the suit. When the Trial Court dismissed the suit on merits, there is no reason whatsoever to remand the matter back to the trial Court. Thus, the appellants are constrained to move the present Civil Miscellaneous Appeal.

3. The learned counsel appearing for the respondent objected the said contention by stating that the Trial Court has failed to consider the spirit of the document marked as Ex.P3. Further, the additional documents filed were also not scrutinized by the Trial Court. In order to complete the trial in entirety, the First Appellate Court remanded the matter back and there is no infirmity. Therefore, the appeal is to be dismissed.

4. This Court is of the considered opinion that under Section 107 of C.P.C, the Appellate Court has got powers to accept the additional documents and examine the witnesses, if required. Non-appreciation of particular document alone cannot be a ground to remand the matter back for fresh disposal. In the event of arriving a conclusion that the trial Court has not appreciated certain documents in proper manner, then the Appellate Court itself can re-appreciate or accept additional documents or if necessary, examine the witnesses by affording opportunity to all the parties concerned. Contrarily, remanding the matter back to the trial Court would cause prejudice to the interest of the parties. All the appeal suits are to be decided on merits and in accordance with law. Remand is an exception and only if the suit was disposed of on preliminary issue, then alone, the Appellate Court may remand the matter back. For each and every lapses, the cases need not be remanded back to the trial Court for re-adjudication. Omission or commission in this regard can be taken note of by the Appellate Court and if necessary, to cull out the truth in order to resolve the



disputes. The Appellate Court itself is empowered to accept additional documents and examine the witnesses by affording opportunity to all the parties. If the suit was disposed of on certain preliminary issue, then alone, the case is to be remanded back. In all other circumstances, the Appellate Court is expected to decide the appeal suit finally.

5. This being the principles to be followed, this Court is of the considered opinion that the defects pointed out by the First Appellate Court can be re-considered and a final decision may be taken by accepting the additional documents and by re-appreciating the documents filed in Ex.P3 and if necessary, examined the witnesses by affording opportunity to all the parties. Such an exercise can be done by the First Appellate Court itself.

6. This being the principles to be followed, the judgment and decree dated 30.11.2015 passed in A.S.No.67 of 2013 is set aside and the matter is remanded back to the First Appellate Court for re-consideration. The First Appellate Court is empowered to accept the additional documents, appreciate or re-appreciate the documents already filed by the parties before the trial Court and examine the witnesses, if required and by affording opportunity to all the parties concerned and thereafter, pass final order on merits and in accordance with law. Such an exercise is requested to be done within a period of six months from the date of receipt of a copy of this order. Parties to the appeal suit are directed not to seek any unnecessary adjournments on flimsy grounds. Even in case of seeking adjournments on genuine grounds, the Appellate Court is expected to record the reasons.

7. Accordingly, the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The II Additional District Judge,
Salem



2. The Principal Sub-ordinate Judge,
Salem.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.12543
+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.12443

C.M.A.No.596 of 2016

SSV(CO)
CS/07/09/2021