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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 741 of 2020

Vengadasalam

..Appellant

Vs

1.Mohan

2.Dhanasegaran @ Jayabalan

3.Ramachandira

..Respondents

Prayer :Civil Miscellaneous Appeal filed under Order XLIII Rule 1(u) of the Code of Civil Procedure against the order of remand dated 28.11.2019 rendered in A.S.No.1 of 2019 on the file of the Principal District Judge, Puducherry, by setting aside the decree and judgment dated 23.10.2018 rendered in O.S.No.99 of 2008 on the file of the Principal Subordinate Judge, Puducherry.

For Appellant : Ms.Elizabeth Ravi

For Respondents: Mr.D.Ravi Chander for R1
R2 & R3 No such addressee

JUDGMENT

The judgment and decree dated 28.11.2009 passed in A.S.No. 1 of 2019 is under challenge in the present civil miscellaneous appeal.

2. The plaintiff is the appellant, who instituted the suit for declaration. The suit was decreed in favour of the plaintiff. The third defendant filed appeal suit in A.S.No. 1 of 2019. The First Appellate Court adjudicated the issues and thereafter arrived at a conclusion that the identification of the suit properties are to be clarified and for the purpose of appointing Advocate Commissioner to identify the property and also to adduce evidence by affording an opportunity to both the parties and the case was remanded back to the trial Court. Challenging the said judgment, the plaintiff filed the present appeal.

3. Perusal of the judgment of the First Appellate Court would reveal that all the issues were adjudicated on merits both by the trial Court as well as by the First Appellate Court. However, the First Appellate Court could not able to decide or



found it difficult to identify the properties and on that ground, the case was remanded back to the trial Court for appointment of Advocate Commissioner. In other words, the First Appellate Court found that the trial Court has not considered the aspect with reference to the identification of the suit properties and such an error is to be rectified by remanding the matter back to the trial Court.

4. The question arises is whether such a remand is necessary or not?

5. Order 41 Rule 23 and Rule 23A CPC provides powers to the First Appellate Court to remand the matter to the trial Court for fresh adjudication. However, Order 41 Rule 24 CPC contemplates that all the appeals are to be decided on merits and it gives powers to the Appellate Court to adduce evidence, if required.

6. Section 107 CPC contemplates that the First Appellate Court can accept additional documents and take evidence by examining the witnesses, if required. Order 41 Rule 24 CPC also stipulates that the First Appellate Court can exercise the powers of examination of the witnesses and acceptance of additional documents to reach finality. Thus, under Order 41 Rule 23 CPC, remand is to be made only if the trial Court decides the suits on certain preliminary issues. If the trial Court has not adjudicated the issue on merits and in accordance with law and decide on certain preliminary issues, then only, the remand is absolutely necessary and in all other cases via re-appreciation of evidence or accepting the additional documents, the case need not be remanded back to the trial Court and such an exercise can be done by the First Appellate Court by affording an opportunity to all the parties concerned.

7. In the present case, both the trial Court and the First Appellate Court adjudicated the issues on merits. If at all, the First Appellate Court found some omission or commission or some lapses, the same can be filled up by accepting additional documents or by appointing Advocate Commissioner or if necessary by taking examination of witnesses and pass final orders on merits and in accordance with law without prejudice to the interest of the parties. The suit is not only prolonging but also it will cause other inconvenience to the litigants. Thus, the Courts are expected to dispose of the appeal on merits and in accordance with law in all circumstances and remand is to be done only by way of an exception and on exceptional circumstances. This being the principles to be followed, this Court is of the considered opinion that the First Appellate Court is well within its powers to appoint Advocate Commissioner to identify the properties and also to adduce evidence by



affording an opportunity to both the parties as to the continuation of the suit is under the provisions of the CPC and, therefore, taking evidence is certainly permissible and the First Appellate Court is expected to exercise such powers and pass final orders on merits and in accordance with law.

8. Accordingly, the judgment and decree dated 28.11.2019 passed in A.S.No. 1 of 2019 is set aside and the matter is remanded back to the First Appellate Court for appointment of Advocate Commissioner to identify the properties and also to adduce additional evidence by accepting additional documents or otherwise to take evidence by examining the witnesses and pass orders on merits and in accordance with law by affording opportunity to all the parties to the appeal suit. Such an exercise is requested to be done within a period of six months from the date of receipt of a copy of this judgment. The parties to the appeal are directed not to seek unnecessary adjournments on flimsy grounds. Even the reason for adjournments are to be recorded by the trial Court. The parties are expected to co-operate for the speedy disposal of the appeal suit.

9. C.M.A. No.741 of 2020 stands allowed. No costs. C.M.P.No. 4561 of 2020 is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ssm

To

1. The Principal District Judge, Puducherry.
2. The Principal Subordinate Judge, Puducherry.
3. The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Ms.Elizabeth Ravi, Advocate sr 10979.

C.M.A.No. 741 of 2020

JPII (CO)
SP(07/09/2021)