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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

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

C.M.A.NO.1476 OF 2018 AND
C.M.P.NO.11736 OF 2018

1.Kanthamani

2.Jayaseelan

..Appellants

Vs.

1.Mohan

2.Dhanalakshmi

..Respondents

Prayer :

Civil Miscellaneous Appeal filed under Order 43(1)(u) of C.P.C., against the decree and judgment dated 22.02.2018 made in A.S.No.15 of 2014, on the file of the Sub Court, Madurantakam, remanding back for fresh trial of the judgment and decree dated 17.04.2014 made in O.S.No.55 of 2010, on the file of the District Munsif Court, Madurantakam.

For Appellants : Ms.Zeenath Begum

For Respondents : Mr.M.Rajasekhar for R1
No appearance for R2

J U D G M E N T

The judgment and decree dated 22.02.2018 made in A.S.No.15 of 2014, is under challenge in the present civil miscellaneous appeal.

2. The suit was instituted by the appellants and the suit is for declaration, permanent injunction and for delivery of possession. The suit was decreed in favour of the plaintiffs. Thus, the defendants filed A.S.No.15 of 2014. During the pendency of the appeal suit, both the plaintiffs as well as the defendants filed interlocutory applications under Order 41 Rule 27 of C.P.C., for receiving additional documents.



3. Both the interlocutory applications were taken up for hearing by the first Appellate Court along with the first appeal in A.S.No.15 of 2014. The first appellate Court, considering the interlocutory applications filed in I.A.No.28 of 2017 & I.A.No.192 of 2017, under Order 41 Rule 27 of C.P.C., remanded the matter back to the Trial Court for reconsideration. The said judgment is under challenge in the present appeal.

4. The question arise is whether the order of remand is in accord with Order 41 Rule 23 and 23(A) or not. The Section 107 of C.P.C., stipulates powers of the appellate Court. The appellate Court is well in its power to determine the case finally and frame issues and to take additional evidence etc. Order 41 Rule 23 may be invoked when the suit was decided by the Trial Court on certain preliminary issues. If the suit was adjudicated with reference to the documents and evidence by the Trial Court, then for the purpose of framing of additional issues or recasting of issues or for examining of one witness, the appellate Court need not remand the matter back to the Trial Court. Such exercise shall be done by the appellate Court itself. Therefore, while remanding the matter back to the Trial Court under Order 41 Rule 23 and 23(A), the appellate Courts are expected to be cautious. Only on exceptional circumstances where it is not possible for the first appellate Court to decide the matter finally, then the matter is to be remanded and not otherwise.

5. In all other circumstances, where as the Trial Court decided the issues on merits by adjudicating the documents and evidence, then any lapses committed, can be re-adjudicated by the appellate Court itself. Therefore, the scheme of C.P.C. is to be considered in this aspect. Order 41 Rule 24 of C.P.C., enumerates 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"

6. Thus, the appellate Court is expected to decide the matter finally under Rule 24 of Order 41 in the event of minor lapses or certain additional documents were not considered or certain witnesses were not examined by the Trial Court. The first appellate Court shall recast the issues or frame additional issues or accept additional documents or examine witnesses, if required, for the purpose of passing final orders in the appeal suit. In the present case, admittedly, the suit was decided on merits and the documents and evidences were appreciated by the Trial Court. While so, the missing elements



in the suit can be adjudicated by the first appellate Court by affording opportunity to all the parties to the appeal suit.

7. Contrarily, remanding the matter back may be an easy way for the Courts, but, the same would cause prejudice to the interest of the litigants. The litigations are prolonged unnecessarily, the litigants are bound to go back to the Trial Court once again which will take longer time for the disposal of the suit. This would frustrate the minds of every litigants.

8. Therefore, in all circumstances, the appellate Court is expected to decide the matter on merits and by affording opportunity to the parties. This being the principles to be followed with reference to the scheme of C.P.C., there is no reason whatsoever for the appellate Court in the present case to remand the matter back. However, the appellate Court shall provide opportunity to all the parties to file additional documents or examine witnesses or to verify the signatures in a particular document by sending the documents to handwriting expert and do all the needful for the purpose of disposal of the appeal suit on merits and in accordance with law.

9. This being the factum established, the judgment and decree dated 22.02.2018 passed in A.S.No.15 of 2014 is set aside and C.M.A.No.1476 of 2018 stands allowed. The appellate Court is directed to decide the matter finally on merits and in accordance with law by affording opportunity to all the parties to the appeal suit. The said exercise is directed to be done within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

10. The parties to the suit are directed to cooperate for the earlier disposal of the suit. The Appellate Court should decline unnecessary adjournments on flimsy grounds if sought for by the parties to the suit. The adjournments sought are to be granted only on genuine grounds and by recording reasons. Thus, the 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

//True Copy//

Sub Assistant Registrar

gsk



To

1. The District Munsif Court,
Madurantakam.

2. The Sub Judge,
Madurantakam.

+1cc to Ms.Zeenath Begum, Advocate, S.R.No.3434

+1cc to Mr.M.Rajasekhar, Advocate, S.R.No.3528

C.M.A.No.1476 of 2018 and
C.M.P.No.11736 of 2018

AD (CO)
PM/06/12/2021