

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

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

C.M.A.No.1619 of 2018

and

C.M.P No.12873 of 2018

R.Shantha

..Appellant

Vs.

1.Ramasamy Gounder
2.P.S.Subramanian
3.C.Ravichandran
4.C.Ramesh Babu
5.C.Anusyua
6.Saraswathy
7.Rajalakshmi
8.N.Mohan
9.Vimala Jayaraman
10.Malathy Muthukrishnan
11.Usha Ramesh
12.Uma Muthuraman
13.Nagasamy
14.Sridhar
15.Raghavan
16.Balasubramanian
17.Usha
18.Sowmya
19.Subbulakshmi

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the judgment and decree dated 12.06.2017 in A.S.No.25 of 2012 on the file of the District and Sessions Court, Thiruvannamalai reversing the judgment and decree dated 27.06.2012 in O.S No.211 of 1990 on the file of the Additional Sub Court, Tiruvannamalai.

For Appellant : Mr.D.Rajasekar

For Respondents : Mrs.P.Veena Suresh for R1
R2 to R19 Exparte

J U D G M E N T

The judgment and decree dated 12.06.2017 passed in A.S.No.25 of 2012 is under challenge in the present Civil Miscellaneous Appeal.

2. The plaintiff is the appellant in the present appeal. The suit was instituted for specific performance and it was decreed in favour of the appellant. The defendants filed an appeal suit in A.S No.25 of 2012. The first Appellate Court remanded the matter back for re-trial mainly on the ground that the trial Court has not considered the documents as well as the evidence in the right perspective and therefore, the issues are to be reconsidered, if necessary by conducting re-examination.

3. The learned counsel for the appellant mainly contended that the reasons furnished for remanding of the matter is unacceptable in view of the fact that the remand is to be made only in the suits are to be decided in the preliminary issues and as far as the present case is concerned, the trial Court considered the issue and passed orders and the first Appellate Court ought not to have remanded the matter and ought to have decided the matter on merits.

4. The learned counsel appearing for the respondent vehemently opposed the matter by stating that the appeal will have to be dismissed on the ground that the first Appellate Court had given a categorical finding that the trial Court has committed an error in not ascertaining the documents or evidences in right perspective. The trial Court ought to have considered the documents filed by the respondents in the suit. Contrary, based on the erroneous footing, the suit was decreed in favour of the appellant and therefore, the first Appellate Court has rightly remanded the matter back for re-trial and there is no infirmity as such and accordingly, the appeal is liable to be dismissed. सत्यमेव जयते

5. Considering the arguments of the respective learned counsel appearing on behalf of the appellant as well as the respondents, this Court is of the considered opinion that Order 41 Rule 23 CPC require that remand can be made by Appellate Court only for the suit was decided as a preliminary issue. If the suit is decided on merits by appreciating the documents and evidences, the first Appellate Court is bound to adjudicate the matter on merits and made a finding based on the documents on merits. Contrary, remanding of the matte back to the trial Court would cause greater prejudice to the parties and further lengthen the duration of the litigation which would cause untold agony to the parties.

6. The first Appellate Court is empowered to receive additional documents and take evidence or witnesses if at all required for the purpose of deciding the issues on merits. This being the legal position, the first Appellate Court ought not to have remanded the matter back for retrial on certain unnecessary grounds. The reasons stated in the judgment of the first Appellate Court is that the trial Court has not considered the documents and evidences in right perspective and such a reason is unacceptable and therefore, the order of remand is perverse.

7. Remanding the matter back to the original Court may be an easy way out for the Appellate Courts, however, such a procedure in the absence of any sound principles cannot be appreciated by the High Courts. The Courts are expected to be cautious while remanding the matter. When the Courts are vested to the power to decide the matter on merits in all circumstances, such Courts are expected to exercise its power in order to provide complete justice to the parties who are all approaching the Court of law. Contrarily, remanding the matter back would lead to prolongation and would cause injustice on account of long delay in delivering the judgment. Speedy disposal of the cases are eminent as the people in general as citizen of our great nation are slowly loosing trust on the judicial system more specifically in the matter of civil litigations. The litigants are mostly frustrated on account of long pendency of civil cases and appeals before the Courts. In most of the civil litigations, the person who instituted the suit may not be alive to see the light of the same. When the matter is decided, the practice of prolongation of the civil litigation is to be cut short by disposing of the matter in the speedy manner and by avoiding such unnecessary remands and unwanted adjournments. The practice of taking adjournments on flimsy grounds are to be declined by the Court in all circumstances. The Courts are expected to be vigilant in disposing of the matter especially the civil suits are pending for long years.

8. Order 41 Rule 33 of CPC enumerates Power of Court of Appeal. Accordingly, the Appellate Court shall have the power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

9. 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.

10. 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.

11. 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.

12. In view of the facts and circumstances, the judgment and decree dated 12.06.2017 in A.S No.25 of 2012 is set aside and the present Miscellaneous Appeal No.1619 of 2018 stands allowed. No costs. The first Appellant Court is directed to take the appeal suit on file and hear the matter by affording opportunities to all the parties concerned and decide the appeal on merits and in accordance with law. The said exercise

is requested to done as expeditiously as possible and preferably within a period of six months from the date of receipt of a copy of this judgment. Consequently, the connected Miscellaneous Petition is closed.

13.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.

s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

1.The District and Sessions Court,
Thiruvannamalai

2.The Additional Subordinate Judge
Thiruvannamalai

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.R. Rajarajan, Advocate sr 16661.

+1 CC to Mr.P. Veena Suresh, Advocate sr 1735.

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C.M.A.No.1619 of 2018
M.P.No.12873 of 2018

SR (CO)
SP (26/04/2021)

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