

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.01.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2581 of 2019
and
C.M.P.No.12384 of 2019

G. Rajendran .. Appellant/ Appellant/Plaintiff

Versus

P.C.Ramalingam .. Respondent/ Respondent/1st Defendant

Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of C.P.C., against the judgment and decree passed in A.S.No.15 of 2017, on the file of the Subordinate Court, Arani, dated 26.04.2019.

For Appellant : Mr. R. Subramanian
for Mr. C. Jagadish

For Respondent : Mr. M. Sriram

J U D G M E N T

The decree and judgment dated 26.04.2019 passed in A.S.No.15 of 2017, is under challenge in the present civil miscellaneous appeal.

2. The plaintiff is the appellant and the suit was instituted for declaration. The suit dismissed against the plaintiff and the appeal suit in A.S.No.15 of 2017 was instituted by the appellant to set aside the decree passed in O.S.No.38 of 1990. The first appellate Court though adjudicated the issues as well as the merits in detail, remanded the matter back to the trial Court for reconsideration. Attacking, the said judgment, the learned counsel for the appellant reiterated that such a remand is improper and the first appellate Court committed an error in not deciding the issues on merits. It is contended that the issues are decided in favour of the the appellant by the first appellate Court and despite the findings in favour of the appellant, the matter was remanded back to the trial Court for re-trial. Thus the appeal is to be allowed.

3. The learned counsel for the respondent objected the said contention by stating that the suit was dismissed rightly. The trial Court considered the issues in right perspective and dismissed the suit. The respondent is confident in view of the fact that the trial Court's judgment is in consonance with law. Thus the respondent has not preferred any appeal against the order of remand. It is contended that the first appellate Court ought not to have given findings in detail, when a decision is taken to remand the matter. Therefore, the first appellate Court has committed an error in remanding the matter back. In fact, the appeal suit itself would have been dismissed.

4. This Court is of the considered opinion that the appellant to the first appellate Court, elaborately discussed the facts and circumstances as well as the findings of the trial Court made with reference to the documents and evidences produced by the respective parties to the suit. Having considered all these documents, evidences as well as the issues, the first appellate Court should not have remanded the matter back, but should have decided the appeal suit on merits.

5. All the suits and the appeal suits ought to be decided on merits. Remand is an exception. Only on certain limited grounds, the cases ought to be remanded back for re-trial. The appellate Court is vested with the powers to receive additional documents, take evidence and examine the witnesses, then such a power is vested with the first appellate Court under the provisions of the C.P.C., the first appellate Court ought to have avoided such unnecessary remanding of the cases to the trial Court which would cause greater prejudice to the interest of the parties. Remanding a case would take longer time for reaching finality. Parties have to re-agitate the matter again before the Civil Court from which an appeal is preferred. Such a circumstances normally would lead to frustration and therefore, the remand is to be made only on exceptional circumstances where the suit was decided only based on preliminary issues. Once the suit is adjudicated on merits and a judgment is delivered then the first appellate Court is bound to decide the matter on merits. Even, if there is a doubt on merits, if required, by receiving additional documents or by examining witnesses and grant permission for cross examination. All such exercise may be done by the first appellate Court, the appeal suit is the continuation of the original suit. Therefore, the first appellate Court is empowered to all such examination and consideration for the purpose of reaching finality and to provide complete justice to the parties concerned.

6. As far as the present appeal is concerned, perusal of the judgment of the first appellate Court reveals that the merits are elaborately considered and discussed by the first

appellate Court. However, mainly on the ground that an issue was not framed if at all the issue was not framed by the trial Court it is well in the powers of the first appellate Court to frame the issue and if, necessary take evidence and decide the matter on merits. This being the settled principles, the first appellate court has committed an error in remanding the matter back. Accordingly, the judgment and decree dated 26.04.2019 passed in AS.No.15 of 2017 is set aside. C.M.A.No.2581 of 2019 is allowed. The appeal suit in A.S.No.15 of 2017 is restored and the first appellate Court is directed to dispose of the appeal suit as expeditiously as possible and preferably, within a period of six months from the date of receipt of a copy of this order. If parties to the appeal suit seek unnecessary adjournments, the first appellate Court shall reject all such adjournments sought for on flimsy grounds. Even if adjournments are to be granted on valid grounds, the reasons are to be recorded.

7. With these observations, the civil miscellaneous appeal stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

AT
To

The Subordinate Judge,
Arani.

2.The District Munsif,
Polur,Thiruvannamalai District.

+4ccs to Mr.C.Jagadish, Advocate SR.No. 1500

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