

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.01.2021

CORAM

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

C.M.A.No.3763 of 2019
C.M.P.No.21620 of 2019

Vinayagamoorthy

...Appellant/Plaintiff

Vs.

1.Jayammal (Died)
2.M.Govindarajan

..Respondents/ Defendant
1,2 in Trial court

R2 is recorded as LR of the deceased R1 as per the order of this Court dated 05.12.2019 made in C.M.A.No.3763 of 2019 as per memo dated 05.12.2019 are recorded.

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the judgment and decree dated 07.12.2018 passed in A.S.No.61 of 2010 on the file of the Court of Subordinate Judge, Tambaram by reversing remand back judgment and decree passed in O.S.No.80 of 2005 dated 23.06.2010 on the file of the court of District Munsif, Tambaram.

For Appellant : Mr.T.Thiyagarajan

For Respondents : Mr.R.Thiyagarajan

J U D G M E N T

The Judgment and decree passed in A.S.No.61 of 2010 dated 07.12.2018 is sought to be set aside in the Civil Miscellaneous Appeal on hand.

2. The appellant is the plaintiff in the suit and the suit was instituted for declaration and permanent injunction. Admittedly, the suit was decreed by the trial Court. Thereafter, the defendant preferred an appeal in A.S.No.61 of 2010 before the learned Sub-ordinate Judge, Tambaram. The First Appellate Court remanded the matter back to the trial Court to file additional documents as sought for by the respondent herein and record evidence by providing an opportunity to all the parties and examine and decide the matter fresh within a period of two months. The said judgment is under challenge in the present Civil Miscellaneous Appeal.

3. The learned counsel appearing for the appellant sterroneously contended that the first Appellate Court has committed an error in remanding the matter back to the trial court for re-trial. Contrarily, the first Appellate Court itself should have continued the examination of the documents filed by the respondent herein and made a finding so as to avoid further prolongation of the civil litigation. Thus, the appeal is to be allowed.

4. The learned counsel for the respondent objected the said contention by stating that a decree cannot be remanded as a defective one and the lapse committed by the trial Court cannot be filled up in an appeal which would cause not only inconvenience and also affect the rights of the parties concerned. The first Appellate Court has rightly considered the grounds raised by the respondents for the purpose of remanding the matter back for re-consideration. The documents sought to be filed as additional documents are vital so as to establish the case of the respondents in the present appeal. In fact, the first Appellate Court has provided an opportunity to cross-examine the witnesses and in spite of availing this opportunity in order to defend the case, the appellant has chosen the present appeal without any merit. Thus, the appeal is liable to be rejected.

5. This Court is of the considered opinion that the suits are to be decreed by considering the relevant documents filed by the parties. Even in case, the parties filed additional documents, during the pendency of the trial or after some time, the Courts are bound to consider whether those additional documents are relevant for the purpose of issues to be decided. If those documents are relevant for the purpose of ascertaining the rights of the parties, then the Courts shall not hesitate in allowing those petitions and provide an opportunity to the other parties to scrutinize those documents and cross-examine the witnesses. At the outset, opportunities are to be provided to the parties to the litigations and a complete justice is to be provided with reference to the disputes or issues raised in the litigations. This being the prime object, the Courts cannot shy away from accepting additional documents, if the Courts are of the opinion that those documents are relevant for the purpose of deciding the rights of the parties. This being the principles to be adopted, the first Appellate Court has considered those aspects and arrived a conclusion that the case is fit one for the purpose of remand.

6. The findings of the trial Court in this regard are that the remanding of the case is absolutely required for fine appreciation, after giving a chance to both parties and the documents filed along with the petitions in I.A.No.111 of 2016 and I.A.No.108 of 2018 are relevant for the purpose of framing the additional issues and to permit the respondents herein to adduce additional documents.

7. Paragraph Nos.28 to 30 of the judgment of the first Appellate Court are relevant, which are extracted hereunder:

28. Based on the above facts and circumstances, this Court is of the considered view that, remanding of this case itself absolutely required for fine appreciation of the facts after giving a chance to both parties. Furthermore, the documents filed along with the petitions in I.A.No.111/2016 and I.A.No.108/2018 received by this Court are permitted to be filed before the trial Court, and this Court is inclined to direct the trial Court to frame necessary additional issues and permit the appellants to adduce additional evidence it may lead to open an opportunity to the plaintiff to scrutinize these documents by way of cross-examination of the plaintiff's side witnesses and to disprove the contention of the appellants which may lead to clarify the issues in a better manner which will enable the Court to adjudicate the issues in right spirit and in a proper way.

29. Hence on the above score this Court is of the considered view that, the case can be remanded back to the file of the trial Court, and the appellants can be permitted to produce the documents filed along with the petitions in I.A.No.111/2016 and I.A.No.108/2018.

30. In the result, this appeal is allowed and the decree and judgment in dated 23.06.2010 passed by the District Munsif, Tambaram in O.S.No.80/2005 is set aside and the case is remanded back to the file of the trial Court with direction to the trial judge that the learned trial Judge directed to frame necessary additional issues and permit the appellants to adduce oral evidence and to permit the appellants to produce the documents as detailed in the petition in I.A.No.111/2016 and I.A.No.108/2018 on the file of this Court and extend sufficient opportunities to other side also, to scrutinize the documents filed on the side of the appellants by way of cross-examination of the appellants/defendants' side witnesses and to reappraise the case on the basis of the above facts and re-adjudicate the issues, and dispose the suit within a period of two months from the date of reception of the decree and the judgment without being influenced by any of the observations of the Court. Court fee paid by the appellant is ordered to be refunded. No costs.

8. This Court is of the considered opinion that the first Appellate Court has rightly considered the issues in a right perspective and there is no perversity or infirmity as such with reference to the findings arrived for the purpose of remanding the matter back. This apart, the first Appellate Court has further granted two months to dispose the case.

Thus, there is no reason whatsoever to interfere with the findings of the first Appellate Court. However, since the time limit fixed by the first Appellate Court was expired, this Court is inclined to grant further time to dispose of the case. Therefore, the trial Court is directed to dispose the suit as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this Judgment.

9. This being the factum, the appellant has not established any acceptable ground for the purpose of interfering with the findings of the first Appellate Court in its order. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

ssb
To

- 1.The Subordinate Court, Tambaram
2. The District Munsif Court, Tambaram.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.T.Thiyagarajan , Advocate SR.No. 395

+1cc to Mr.R.Thiyagarajan , Advocate SR.No. 239

C.M.A.No.3763 of 2019

cnr co
A.SK(05.03.2021)

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