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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

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

C.M.A.No.1602 of 2014

and

M.P No.1 of 2014

1.S.Kalavathi

2.V.Sampath

..Appellants/Defendants

Vs.

Ramamani

..Respondent/Plaintiff

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of CPC, to set aside the decree and judgment dated 04.12.2013 made in A.S No.7 of 2012 on the file of the Principal Subordinate Judge, Krishnagiri and to confirm the decree and judgment dated 09.01.2009 passed in O.S No.112 of 2006 on the file of the District Munsif, Krishnagiri.

For Appellants : Mr.M.Ganesan

For Respondent : Mr.N.E.A.Dinesh

J U D G M E N T

The judgment and decree dated 04.12.2013 passed in A.S No.7 of 2012 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellants are the defendants in the suit and the respondent instituted the suit for permanent injunction. The suit was dismissed and the respondent had filed first appeal in A.S No.7 of 2012. The first Appellate Court remanded the matter back to the trial Court for re-trial and challenging the same, the present Civil Miscellaneous Appeal is filed.

3. The question arises whether the remanding of the matter is in accordance with the established principles or not?

4. Section 107 of CPC enumerated that the Appellate Court shall have the power to determine the case finally. Even the Appellate Court is empowered to take additional evidence or to require such other evidence to be taken.



5. At the outset, it is contended that the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein. Thus, the appeal suit is in continuation of the original civil suit and the first Appellate Court is empowered to examine the witnesses by framing additional issues if necessary instead of remanding the matter back to the trial Court. Remanding the matter may be an easy way for the Courts. However, such practice never be appreciated in the absence of sound reasons and on concrete grounds. Mere remanding the matter would cause greater prejudice to the parties to the litigation. In the event of remand, the parties again has to go to the trial Court and contest the case and thereafter, file an appeal before the first Appellate Court. The said process would take long time and therefore, such protraction and prolongation to the litigant are to be avoided as far as possible.

6. Keeping the above principle in mind, it is under the considered order impugned in the present Civil Miscellaneous Appeal, the findings of the Appellate Court in para 15 of the judgment reads as under:

15(i) An overall appraisal shows that plaintiff and 1st defendants are sisters. 2nd defendant is the husband of 1st defendant. Further, both the parties admitted that they are in joint possession and enjoyment of the suit property. As per the sale deed dated 10.10.2005 plaintiff agreed to sell the suit property to the 2nd defendant, for a sale consideration of Rs.81,000/- and also plaintiff received Rs.76,000/- as advance with condition within 10 months from the date of sale deed after receiving remaining amount, she would complete the sale proceedings. Further, from the date of above said agreement, i.e, 10.10.2005, plaintiff left the possession to the 2nd defendant. From that date, defendants 1 and 2 are in possession of the said property. Even though 2nd defendant approached the plaintiff and asked her to comply the sale agreement but plaintiff has dragged the same by saying false reasons. In order to cheat the defendant, plaintiff has filed the suit.

(ii) Of course, it is settled law that agreement of sale does not confer title and therefore, the agreement holder even assuming that the agreement is valid does not acquire any title to the property. But, defendants have not raised any claim regarding the title of suit property and admitted that suit properties are belong to plaintiff. At the same time, once plaintiff has





10. In the result, the present Civil Miscellaneous Appeal No.1602/2014 stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge
Krishnagiri

2.The District Munsif
Krishnagiri

+1cc to Mr.V.Nicholas Advocate SR.No.1296

C.M.A.No.1602 of 2014
M.P.No.1 of 2014

KK (CO)
GMY (08/09/2021)