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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.Nos.1657 and 1892 of 2014
and M.P.Nos.1, 1 of 2014

1.Chinnma Reddy
2.Raghava Reddy

... Appellants/Respondents/
Defendants in CMA No.1657 of 2014

Vs.

1.Angathamma
2.Rathinamma
3.Dhayanandha Reddy
4.Kuppammal

...Respondents/Appellants/Plaintiffs
4 to 7 in CMA No.1657 of 2014

1.Chinnma Reddy
2.Raghava Reddy

...Appellants/Respondents/
Plaintiffs in CMA No.1892 of 2014

VS

1.Dhayanandha Reddy
2.Kuppammal

...Respondents/Appellants/Defendants
1 & 4 in CMA No.1892 of 2014

COMMON PRAYER : Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(u) of C.P.C read with Section 104 of C.P.C, praying to set aside the judgment and decree dated 26.02.2014 made in A.S.Nos.17 and 16 of 2009 respectively, on the file of the Subordinate Judge at Gudiyatham, Vellore District, reversing the judgment and decree dated 07.01.2009, made in O.S.Nos.715 and 675 of 1990 respectively on the file of the District Munsif Court, Gudiyattam, Vellore District.

For Appellant : Mr.T.Dhanyakumar
in both CMAs

For Respondents : Mr.K.A.Ravindran
in both CMAs

C O M M O N J U D G M E N T

The appellants herein are the plaintiffs in O.S.No.675 of 1990, which was filed by them against the defendants/respondents



for the relief of declaration and other consequential reliefs in respect of the land and house of the properties.

2. The defendants also filed a suit against these plaintiffs for declaration and permanent injunction and other consequential reliefs. Both suits were tried together and a common judgment was pronounced. Accordingly, the suit filed by these appellants were decreed and suit filed by the defendants (in O.S.No.715 of 1990) dismissed.

3. Aggrieved by that the defendants preferred these appeals in A.S.Nos.16 and 17 of 2009 respectively, before the Subordinate Judge, Gudiyatham, Vellore District. The plaintiff contested the said appeal. The first Appellate Court instead of disposing the appeal on merits remanded the entire suit to the trial Court with a direction to examine the Revenue Official as witness and to appoint an Advocate Commissioner to measure the suit properties, and given opportunity to the defendant to adduce additional evidence. Aggrieved by that order, the plaintiffs preferred the appeal.

4. Point for Consideration:

Whether the first Appellate Judge was in rightly to remand the case to the trial Court in order to adduce further evidence and to appoint an Advocate Commissioner to measure the properties and to examine the Revenue Official as witnesses.

5. The learned counsel for the appellant argued that the trial Judge elaborately discussed the issues between the parties and decreed the suit in their favour. But the first Appellate Court instead of disposing the case on merits, in order to fill up the lacuna, the defendants/respondents herein were given opportunity to adduce further evidence by remanding the entire case to the trial Court, which is beyond the scope of the provision of under Order XLI Rule 23 C.P.C.

6. The learned counsel for the respondent argued that since the appellant claiming right over the property, based upon a patta and the same was found with some correction, so that only the first Appellate Court remanded the matter to the trial Court to examine the Revenue Officials about the genuineness of the patta and also given further opportunity to measure the suit property, through the Advocate Commissioner to establish the physical features of the suit property. The first Appellate Court rightly remanded the matter. So he prays to dismiss the appeal.

7. Order XLI Rule 23 C.P.C., which reads as follows:

"Where the Court from whose decree an appeal is preferred has disposed of the suit upon a



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preliminary point and the decree is reversed in appeal, the Appellate Court may, if it fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit, and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand."

8. As per provision of law, the matter can be remanded, if there is any error apparent on the face of the record or else, if any documentary which are vital to prove the claim of the parties and if the same was not able to produce, at the time of trial, inspite of their best efforts then only the Court by recording the reason, the entire case can be remanded to the trial Court. But, in the case on hand before the trial Court, both the parties are given opportunity and they marked sufficient documents to prove their claim based upon the oral and documentary evidence in the trial Court disposed of the case on merits by elaborately discussing the issues between the parties.

9. On the side of the plaintiffs Exs.A1 to A15 were marked, Exs.Pws.1 and PW.2 were examined, on the side of the defendant Exs.P1 to P17 documents were marked and three witnesses were examined.

10. Therefore, the first Appellate Judge without considering all these aspects remanded the entire case, in order to examine the Revenue Officials and to appoint an Advocate Commissioner and to adduce further witnesses are all beyond the scope of the Order XLI Rule 23 C.P.C., in order to fill up the lacuna, the matter has been remanded to the trial Court. On the other hand, the first Appellate Judge ought to have decided the appeal on merits. But in this case, the first appellate Judge instead of disposing the case on merits remanded the matter for the above said purpose as such is not maintainable in law. Therefore, the order passed by the first Appellate Judge is set aside as no merits. The First Appellate Court is directed to decide the appeal, on merits within three months from this judgment by hearing both sides, without giving unnecessary adjournments.



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11. Accordingly, this Civil Miscellaneous Appeal is ordered. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Subordinate Judge, Gudiyatham,
Vellore.
2. The District Munsif Court,
Gudiyattam, Vellore District.

Copy to

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

C.M.A.Nos.1657 and 1892 of 2014

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