

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3029 of 2014
and
M.P.No.1 of 2014

Karuppaiyan

.. Appellant

Vs.

1.Pannaiya Nadar
2.R.Palaniyappan
3.Chandirambal
4.Sinthamani @ Saroja

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of CPC, against the order of remand passed by the Subordinate Judge's Court at Tiruchengode, dated 11.04.2014, in A.S.No.25 of 2013, reversing the judgment and decree of the Principal District Munsif at Tiruchengode, dated 30.11.2010 in O.S.No.249 of 2005.

For Appellant : Mr.P.Valliappan

For Respondents: Mr.Hari Babu for R1
No appearance for R2 to R4

J U D G M E N T

The appellant herein is the 1st defendant, who filed a suit in O.S.No.249 of 2005 on the file of the Principal District Munsif at Tiruchengode, against the respondents/plaintiff and defendants 2 & 3, for the relief of permanent injunction and other consequential reliefs.

2. The appellant and the respondents 2 to 4 contested the suit.

3. After full trial, the trial Court decreed the suit in favour of the 1st respondent / plaintiff. Aggrieved by the decree, the appellant & the 4th respondent / the defendants 1 and 4 preferred an appeal in A.S.No.25 of 2013 before the Subordinate Court Tiruchengode. On hearing both sides, the appeal was allowed and the case was remanded to the trial Court for fresh trial by framing the additional issues, giving

sufficient opportunities to the parties to adduce further oral and documentary evidence and to dispose the case freshly. Aggrieved by the order of the appellate Court, the appellant / 1st defendant has preferred the present appeal before this Court.

4. The question of law that arises for consideration is as to

"whether the order of remand passed by the learned First Appellate Judge with regard to framing of additional issue and to adduce further evidence and to dispose the case is sustainable under Order 41 Rule 23 and 23-A of CPC?"

5. The learned counsel for the appellant / D1 submitted that the plaintiff is the absolute owner of the suit property in S.No.25 /4A and the defendants are residing in S.No.24 in Natham poromboke, but they caused trouble in the plaintiff's enjoyment. The plaintiff took steps to fix the boundary line by fixing service stones, but the same was removed by the defendants. So he filed the suit.

6. The defendants contested the suit stating that their ancestors enjoying the land in and around their house as backyard pial & tethering cattle, in which the plaintiff has no right. But the plaintiff attempted to fix the boundary stones. Hence, the defendants objected.

7. The issues were framed and both sides oral and documentary evidence were adduced.

8. On considering all the evidence, the Trial Court decreed the suit in favour of the 1st respondent / plaintiff. Aggrieved by the order of the trial Court, the defendants 1 and 4 preferred appeal before the Subordinate Court, Tiruchengode in A.S.NO.25 of 2013 and while disposing of the said appeal, the learned First Appellate Judge concluded that the trial Court ought to have framed necessary issues regarding the nexus between the title deed and patta of the plaintiff, so as to find out the lawful possession over the entire suit property and the First Appellate Court has also framed two additional issues and remanded the matter to trial Court to decide those issues. The entire suit was remanded to the trial Court for fresh trial under Order 41 Rule 23 CPC. Aggrieved by the judgment of the First Appellate Court, the appellant / 1st defendant has preferred this appeal.

9. At the time of arguments, the learned counsel for the appellant submitted that the First Appellate Court itself has ample power to decide all the issues and even if there is any commission and omission made by the trial court it could be corrected by the First Appellate Court under Order 41 Rule 23 CPC. For that, the learned counsel for the 1st respondent

relied the following authorities:

(i) Hon'ble Division Bench of this Court, judgment in the case of V.Munusamy (deceased) and others Vs.M.Suguna, reported in 2005(1) CTC 107, where in it has been held as follows:

3. Courts have held that only in exceptional cases where the judgment of the trial Court is wholly unintelligible or incomprehensible the appellate Court can remand the matter for fresh disposal. Order 41, Rule 23 give ample power to the lower appellate Court to decide all issues, including appointment of a commission for local inspection, secure finding from the trial Court. Even if certain mistakes crept in the order of the trial Court, the same can be rectified by the appellate Court itself, unless there are very compelling circumstance to make an order of remand. An order of remand should be sparingly exercised. There should be always endeavour to dispose of the case by the appellate Court itself, when the commissions and omissions made by the first Court could be corrected by the appellate Court....."

(ii) In another case, a Division Bench of this court in the case of Elumalai Vs. Kanthamani Ammal, reported in 2017(1) CTC 307, held as follows:

"Appellate Court to decide where all issues are not framed but evidence adduced on all such issues provided parties thereto understood such issues - Remand is exception to Rule 24 - Appellate Court to invoke Rule 24 and if not possible on facts invoke Rule 25 - Rule 23 or 23-A to be invoked sparingly and as last alternative - Remand not to be made to reconstruct case - Change of substantive law or advent of new law affecting original cause of action no ground for remand."

10. Considering the ratio laid down in the above cases, which are squarely applicable to the case on hand for the reason that, the First Appellate Judge framed additional issues and to decide those issues and remanded the case for fresh trial. But as rightly pointed out by the appellant's counsel under Order 41 Rule 23(A) CPC the First Appellate Court itself has ample powers to decide even additional issues by invoking Order 41 Rule 24 CPC where the evidence is still available to decide the material points in controversy in a suit.

11. But without applying those principles, the learned First Appellate Judge erroneously remanded the case to

the trial Court for fresh trial in order to decide the additional issues which is beyond the scope of Order 41 Rule 23 CPC and it is also unwarranted one. Furthermore, the learned trial Judge decided all the issues on merits. The First Appellate Court ought not to have remand the case on the ground that the evidence is not properly adduced and the order of remand should not be made to fill up the lacuna to allow the party to adduce evidence. It is possible for the First Appellate Court to evaluate the oral and documentary evidence and if material particulars are available, the appellate Court itself can decide the matter one way or the other. Remanding the matter for fresh adjudication, gives the litigation a fresh lease of life and will lead to protraction of proceedings. Following the ratio laid down by the Hon'ble Division Bench of this Court in the case of Arockiaprakash v. Rangasamy reported in 2007(3) CTC 383: CDJ 2007 MHC 1639, in the case on hand the First Appellate Court committed error by remanding the entire case to the trial Court by setting aside the judgment passed in the original Suit.

12. The learned counsel for the First respondent / plaintiff submitted that, already they have produced sufficient documents to prove the title over the property. The additional issues were framed by the First Appellate Court. But he is ready to answer any additional issues with documents. He further contended that remand order passed by the First Appellate Court is justifiable and it is well within ambit of law.

13. But as discussed above, the submission made by the plaintiff is unsustainable one and the order of remand made by the First Appellate Court is unwarranted one. Accordingly the order passed by the first Appellate Court is set aside. The learned First Appellate Judge is directed to dispose of the case in A.S.No.25 of 2013, on merits and in accordance with law within a period of three months from the date of receipt of a copy of this judgment.

14. In the result, the Civil Miscellaneous Appeal is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Munsif,
Tiruchengode.

2.The Subordinate Judge,
Tiruchengode.

+1cc to Mr..Valliappan, Advocate, S.R.No. 21727

C.M.A.No.3029 of 2014
and
M.P.No.1 of 2014

RLD (CO)
GN(17/06/2021)