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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3335 of 2014

M.P.No.1 of 2014

Rukmani

.. Appellant/Plaintiff

vs.

1.Kuppusamy

2.Suganthi

.. Respondents/Defendants

PRAYER : Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of C.P.C, against the Order and Decree dated 26.06.2014 made in A.S.No.4 of 2013 on the file of the II Additional District Judge, Tindivanam remand back to the judgment and decree dated 12.04.2012 in O.S.No.18 of 2007 on the file of the Additional Sub-ordinate Judge, Tindivanam.

For Petitioner : Mr.D.Ravichander

For Respondent : Mr.N.P.Jayakumar for RR1 to 2

O R D E R

The Judgment and decree dated 26.06.2014 passed in A.S.No.4 of 2013 is under challenge in the present Civil Miscellaneous Appeal.

2. The plaintiff is the appellant and the suit was instituted for partition. The trial Court adjudicated the issues and decreed the suit in favour of the plaintiff. The defendants filed the appeal suit in A.S.No.4 of 2013. The first Appellate Court considered the issues and remanded the matter back for re-trial, on account of the fact that there are many ambiguities in the judgment passed by the trial Court. Therefore, it is relevant to consider the findings of the first appellate court and the reasons stated for remanding the matter back to the trial Court. The first appellate Court appreciated certain facts with reference to the suit properties and made a findings as under:



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15.Item No.14 is standing in the name of strangers Rathina Udiayar and his wife Malliga. Ex.B10 would reveal this fact. Plaintiff has not given the new R.S.No. So as to find the truth. He has not stated as to how it went to the hands of strangers.

16.Item No.5 to 8 stand in the name of Raji, Saroja, Rathina Udayar, Sowbagyam Ammal. Patta Ex.B11 and A Register B12 would reveal that. All the items have been consolidate in one R.S.No. About which plaintiff has not furnished any details. This fact and her admission in evidence would reveal that she had no connection with her father's family for many years.

17.Remaining items are 1,9 and 12. Item No.1 stands in the name of first defendant and three others. Whether the R.S.No. Correlates with the new R.S. No. And extent are correct, has to be verified. About them No.9 it is shown as vacant site. But plaintiff has admitted that house has been constructed by her brother the first defendant. No discussion has been made about the construction and rights over its. Further new R.S. No. To be verified and revenue records to be verified, regarding which plaintiff has to adduce evidence. Item No.12, though stated to be sold, no document produced. Encumbrance certificate/Ex.B17 and 18 does not reveal anything about item 12. Hence, roving investigation has to be done for this item also.

At the risk of repetition item war particulars as discussed above are given below in brief.

1.Item 3, 10 and 11 were sold by their father to strangers long back, and they are enjoying for more than the statutory period.

2.Item 2 was sold at the time of filing of suit and before service of summons to first defendant. The bona fide purchaser to be impleaded as party.

3.Item No.4 is standing in the name of strangers Rathina Udaiyar and his wife Malliga who are strangers. How it went to their hands to be verified.

4.Item No.5 to 8 stand in the name of Raji, Saroja, Rathina Udaiyar, Sowbagyam Ammal. Similarly, Item No.1 stands in the name of many joint owners. First defendant is also the joint patta owner. The extent and R.S.No. To be verified.

5.Item No.9 and 12 seems to be in the name of family members. It is to be verified from revenue records correlating with new R.S.Nos.

Though item No.9 shown as vacant site, a house has



then, it is preferable to remand the matter back. Under Order XLI Rule 23 and Rule 23(A) of C.P.C, empowers the First Appellate Court to remand the matter back. Undoubtedly, if the issues are decided on merits and in accordance with law, then the First Appellate Court should always decide the matter on merits, if necessary, by accepting additional documents or examining the witnesses. But, in the present case, lot of defects were noticed by the first Appellate Court. Therefore, it is very difficult to conduct re-trial entirely by the First Appellate Court. With reference to several items of the suit property, the doubts have been identified by the First Appellate Court. When there are many items stated in the plaint and there are many doubts with reference to the evidence available, then it is preferable to remand the matter back to the trial Court for re-trial. This being the factum, the first Appellate Court has rightly considered the issues and remanded the matter back to the trial Court for re-trial. Accordingly, the judgment and decree dated 26.06.2014 passed in A.S.No.4 of 2013 stands confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs. Connected miscellaneous petition is also closed.

4. However, the trial Court is directed to dispose of the suit as expeditiously as possible and preferably within a period of 10 months from the date of receipt of a copy of this order. The parties to the suit are directed to co-operate for earlier disposal of the suit

5. The parties to the appeal are restrained from seeking unnecessary adjournments. Adjournments are to be granted only on genuine grounds and by recording reasons. Adjournments on flimsy grounds are to be rejected in limine by all Courts. The parties cannot be given privilege of getting adjournments for their benefit in order to prolong and protract the issues.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The II Additional District Judge,
Tindivanam



2. The Sub-ordinate Judge,
Tindivanam.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to Mr.D.Ravichandran, Advocate, S.R.No.4249

+1cc to Mr.N.P.Jayakumar, Advocate, S.R.No.3919

C.M.A.No.3335 of 2014

SV(CO)
SU(25/11/2021)