

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM

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

C.M.A.No.3558 of 2014

and

M.P No.1 of 2014

1.Palaniammal

2.Prakash

..Appellants/
Plaintiffs

Vs.

1.Perumal

2.Arukkani

..Respondents/
Defendants

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 of CPC, to set aside the Judgment and decree dated 30.06.2014 passed by the Principal Subordinate Court, Erode in A.S.No.31/2013 as far as the order of remand is concerned against the Judgment and decree dated 11.07.2012 passed in O.S.No.70/2010 on the file of the 2nd Additional District Munsif Court, Erode.

For Appellants : Mr.M.Karthick for
Mr.I.C.Vasudevan

For Respondents : No appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed to set aside the Judgment and decree dated 30.06.2014 passed by the Principal Subordinate Court, Erode in A.S.No.31/2013 reversing the Judgment and decree dated 11.07.2012 passed in O.S.No.70/2010 on the file of the 2nd Additional District Munsif Court, Erode.

2. The appellants are the plaintiffs who instituted the suit for recovery of possession. The suit was decreed in favour of the plaintiffs and the defendants preferred A.S.No.31 of 2013. The first Appellate Court allowed the appeal and remanded the matter back to the Trial Court for framing additional issues. The additional issue itself is framed by the first Appellate Court as "Whether the suit has been correctly valued?". Further, the appellants and defendants were directed to appear before the Trial Court to proceed with the suit.

3. A short question arose whether the first Appellate Court has rightly remanded the matter back with reference to the additional issues regarding the correct valuation of the suit. Order 41 Rule 24 of C.P.C., enumerates that "Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds"

4. The first Appellate Court is empowered to take on record the valuation of the suit already made by the Trial Court and accordingly, correct the same, if necessary. Contrarily, remanding the matter for this purpose would cause greater inconvenience to the parties to the suit and further it will prolong the suit for a longer time.

5. Remand is to be made when there is no material available on record to consider by the first Appellate Court. Routine remand of the cases are impermissible and the Courts are bound to decide the issues on merits and in accordance with law. For trivial issues, the Appellate Courts cannot remand the matter back to the Trial Court for reconsideration which would cause untold agony and inconvenience to the parties, because once again they have to go back to the Trial Court and after judgment, a further appeal is to be filed before the same Court. In this regard, it is relevant to remind Section 107 of C.P.C., wherein, the powers of the Appellate Court are well enumerated. The first Appellate Court can determine the case finally. However, remanding of the case is done only if warranted and not on every occasion. Thus, a fine distinction is to be drawn by the first Appellate Court while remanding the matters back to the Trial Court for reconsideration. Certain issues cannot be decided for want of vital documents or evidences and in those circumstances, the decision is to be taken by the Appellate Court contrarily for each and every trivial issues. If the cases are remanded back to the Trial Court, the same would cause greater prejudice to the parties to the litigation.

6. Under these circumstances, this Court is of the opinion that the additional issue framed by the first Appellate Court in this case is whether the suit has been correctly valued or not. The valuation of the suit can be assessed by the first Appellate Court itself and by assessing the valuation, the first Appellate Court would have proceeded the appeal on merits and decide the matter finally instead of remanding the matter back.

7. This Court has no hesitation in arriving at the

conclusion that the remanding of the matter is perverse and not in consonance with the established principles. Accordingly, the judgment and decree dated 30.06.2014 passed in A.S.No.31 of 2013 is set aside. The first Appellate Court viz., the Principle Subordinate Judge, Erode, is directed to value the suit correctly based on the documents and evidence available and accordingly proceed with the matter on merits and dispose of the same as expeditiously as possible and by affording opportunity to the parties concerned, preferably within a period of six months from the date of receipt of a copy of this order.

8. In the result, the present Civil Miscellaneous Appeal No.3558 of 2014 is allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Principle Subordinate Judge, Erode.
- 2.The Additional District Munsif Court, Erode.

+1cc to M/S I.C.Vasudevan, Advocate, SR.No.830

C.M.A.No.3558 of 2014
and
M.P No.1 of 2014

KV(CO)
PM(01/09/2021)