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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.407 of 2014

P.Amose (died)
Moses (died)
1.Yobu
2.Solomon
3.Esther
4.Rathinammal
5.Samuel
6.Edwin Charles
7.Henry Shillaus
8.Santhosham
9.Geetha
10.Beulah
11.Vanitha
12.Gracy
13.Jayaprakash
14.Jayanthi
15.Sheeba
16.Rheena

.. Appellants

(Cause title accepted vide order of Court
dated 20.01.2014 made in M.P.No.1 /2013
CMASR. No.80666/2013)

Vs.

1.Karunnisha
2.Kamal
3.The Commissioner
Tiruppur Municipality,
Tiruppur.

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 rule 1(u) of Civil Procedure Code, against the judgment and decree dated 10.08.2012 in A.S.No.58 of 2008 on the file of the Principal Subordinate Judge, Tiruppur, reversing the judgment and decree dated 31.07.2008 in O.S.No.551 of 2004 on the file of District Munsif, Tiruppur.



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For Appellants : No appearance
For Respondents
For R3 : M/s.P.Shanthi
For R1 & R2 : No appearance

J U D G M E N T

The appellants herein are the plaintiffs who filed a suit in O.S.No.551 of 2004 against the respondents / defendants for the relief of permanent injunction and other consequential reliefs. After full trial the suit was decreed in their favour. Aggrieved over the judgment, the defendants preferred an appeal in A.S.No.58 of 2008 before the Sub-Court, Tiruppur.

2. On hearing both sides the First Appellate Judge remanded the entire case to the Trial Court with a direction to implead the necessary parties as well as to amend the description of the property and also permission to adduce further evidence if necessary on the side of both the parties with a fresh disposal. Aggrieved by the said order the appellant has preferred this appeal.

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

"Whether the order of remand made by the First Appellate Judge with regard to implead the parties, and to amend the description of the properties and adduce further evidence if necessary is sustainable in law?"

4. The appellant / plaintiff filed suit in O.S.No.551 of 2004 against the defendants not to cause any interference in the possession and enjoyment of the suit property. But defendants contested the suit that properties are not only belonged to the father of the plaintiffs but also another legal heir Krishnan also having share in the properties from whom they purchased the properties through sale deed.

5. During trial witness and documents adduced on the side of the plaintiffs and the defendants. Based upon that the trial Court decreed the suit in favour of the plaintiffs. The defendants have preferred an appeal before the First Appellate Court. The First Appellate Judge, while disposing of the appeal, passed an order of remand with a direction to implead the legal heirs of the so called purchaser of the defendants and also to amend the description of the properties besides parties were permitted to adduce further evidence.



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6. Under Order 41 Rule 24 speaks as follows:

"24. Where evidence on record sufficient, Appellate Court may determine case finally:- 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."

7. The ratio laid down in, 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."

also squarely apply to facts of this case.

8. The learned counsel for the appellant rightly submitted that to fill up the lacuna, the suit should not be remanded. But the First Appellate Judge without the appreciation of the facts and without the application of the mind remanded the matter is unsustainable one. Therefore, the order passed by the learned First Appellate Judge is set aside and the First Appellate Court is directed to dispose the A.S.No.58 of 2008 within a period of three months from the date of receipt of a copy of the judgment. No costs.

9. Accordingly, this Civil Miscellaneous Appeal is allowed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Tiruppur.

2.The District Munsif,
Tiruppur.

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

+1cc to Mr.C.V.Vijayakumar, Advocate, S.R.No.19882

C.M.A.No.407 of 2014

BP(CO)
CB(23/07/2021)