

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

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

C.M.A.No.1019 of 2017 and
C.M.P.No.4971 of 2017

1.Lalitha
2.Vijay Anand

... Appellants/Defendants

Vs.

B.Tolochand Nahar

... Respondent/Plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the judgment and decree dated 22.12.2016 in A.S.No.198 of 2015, on the file of XV Additional City Civil Court, Chennai setting aside judgment and decree dated 30.04.2015 in O.S.No.7992 of 2011 on the file of the III Assistant City Civil Court, Chennai and allow the above Civil Miscellaneous Appeal.

For Appellants : Mr.R.Subramanian
For Respondent : Mr.Ralph Manohar

JUDGMENT

The judgment and decree dated 22.12.2016 passed in A.S.No.198 of 2015 is under challenged in the present Civil Miscellaneous Appeal. The defendants are the appellants in the present appeal. The suit was instituted for permanent injunction and mandatory injunction. The suit was decreed in favour of the plaintiff. The defendants instituted the Appeal Suit in A.S.No.198 of 2015. The first appellate Court remanded the matter back on the ground that the trial Court again shall issue commission of warrant to the same Advocate Commissioner to inspect and measure the disputed passage, the extent of the plaintiff's and defendants property as per Ex.A1, Ex.A2, Ex.A3 and Ex.A5 sale deeds along with a qualified Town Surveyor and then dispose of the suit according to the evidence available without taking into consideration the discussions made in the appeal, within three months from the date of receipt of a copy of the appeal judgment.

2.Remanding of the case for retrial by the first appellate Court may be an easy affair, however this Court cannot appreciate such remand which is absolutely unnecessary with

reference to the provisions of the Code of Civil Procedure. The Courts must try to decide the issues on merits. Contrarily, on certain trivial grounds, the suits cannot be remanded back for retrial as, such remand would cause great prejudice to the interest of the parties to the suit. In the event of remand, the trial Court has to again re-adjudicate the issues and deliver judgment. Then thereafter, the first appeal has to be filed, it amounts to prolongation of the disputes which is not preferable at all.

3. Section 107 C.P.C., enumerates the powers of the appellate Court, the appellate Court shall take additional evidence or require such evidence to be taken. Even under Order 41 Rule 24 of the Code of Civil Procedure, where evidence on record is sufficient the appellate Court may determine case finally. The provision states 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. Accordingly, the judgment and decree dated 22.12.2016 passed in A.S.No.198 of 2015 is set aside and the Civil Miscellaneous Appeal stands allowed. The Appeal Suit is remanded back to the first Appellate Court for adjudication and by affording opportunity to all the parties concerned and decide the matter on merits if necessary by framing additional issues or by examining witnesses and documents as required for the purpose of disposal of the case on merits. The first Appellate Court is directed to dispose of the Appeal Suit as expeditiously as possible and preferably within a period of six months from the date of receipt of a copy of this order.

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. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv2

To

1.The XV Additional City Civil Court,
Chennai.

2.The III Assistant City Civil Court,
Chennai.

Copy to

The Section Officer,
VR Section, High Court Madras.

+1 cc to M/s.R.Subramanian, Advocate Sr.No. 12021

+2ccs to Mr.Ralph V Manohar, Advocate, Sr.No. 12611

C.M.A.No.1019 of 2017

SR(CO)
RMP(08/03/2021)



WEB COPY