

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2021

CORAM

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

C.M.A.Nos.2262 to 2265 of 2017 and
C.M.P.Nos.12022, 12063, 12024 & 12025 of 2017

1.V.Easwaran ... Appellant/Defendant in C.M.A.No.2262 of 2017

1.A.Jaganathan
2.J.Sathyapriya
3.J.Rajadurai

...Appellant/Defendants in C.M.A.No.2263 of 2017

1.V.Dhakshinamoorthy

... Appellant/Defendant in C.M.A.No.2264 of 2017

1.Angammal

... Appellant/Defendant in C.M.A.No.2265 of 2017

Vs.

G.Ramachandran ...Respondent/Plaintiffs in all cases

PRAYER in C.M.A.No.2262 of 2017: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the judgment and decree dated 22.06.2017 in A.S.No.113 of 2016 on the file of the Principal District Court, Erode, remanding the matter in O.S.No.206/2006 back to the II Additional Sub Court, Erode.

PRAYER in C.M.A.No.2263 of 2017: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the judgment and decree dated 22.06.2017 in A.S.No.114 of 2016 on the file of Principal District Court, Erode, remanding the matter in O.S.No.218/2006 back to the II Additional Sub Court, Erode.

PRAYER in C.M.A.No.2264 of 2017: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the judgment and decree dated 22.06.2017 in A.S.No.115 of 2016 on the file of Principal District Court, Erode, remanding the matter in O.S.No.208/2006 dated 22.01.2016 back to the II Additional Sub Court, Erode.

PRAYER in C.M.A.No.2265 of 2017: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of CPC, to set aside the judgment and decree dated 22.06.2017 in A.S.No.116 of 2016 on

the file of Principal District Court, Erode, remanding the matter in O.S.No.220/2006 back to the II Additional Sub Court, Erode.

For Appellants		
in all cases	:	Mr.S.Mukunth for Mr.Saravabhauman Associates
For Respondent		
in all cases	:	Mr.K.S.Jeyaganeshan

COMMON JUDGMENT

The judgments and decrees dated 22.06.2017 passed in A.S.Nos.113, 114, 115 & 116 of 2016 are under challenge in the present Civil Miscellaneous Petitions.

2.The defendants are the appellants in the present appeal and the respondent instituted a suit for specific performance. The suit was dismissed and the plaintiff instituted an Appeal Suit in A.S.Nos.113, 114, 115 & 116 of 2016. The first Appellate Court remanded the matters back to the trial Court for reconsideration on the ground that all the issues were not dealt with by the trial Court nor a discussion was made with reference to the issues separately, while made a finding in respect of the manner in which the suit was decided. The first Appellate Court elaborately considered various documents for the purpose of remanding the matter back for retrial.

3.The learned counsel for the appellants reiterated that an issue was framed whether the sale agreement was valid or not. The trial Court elaborately considered the validity of the sale agreement entered into between the parties and accordingly, made a finding that the sale agreement is fabricated and null and void in the eye of law. The learned counsel for the appellants is of the opinion that once the trial Court arrived a conclusion that the sale agreement itself is invalid in a suit for specific performance, there is no necessity to go into the other issues as rest of the issues are consequential to the sale agreement as far as the suit for specific performance is concerned.

4.It is contended that even in case, the first Appellate Court is of the opinion that the documents are not rightly considered by the trial Court, it is well in its powers to frame additional issues, take evidence or consider other documents and decide the matter finally. Contrarily, remanding the matter would cause great prejudice to the interest of the parties and it lead to multiplicity and prolongation of litigations. Such a practice is to be avoided by the Courts.

5. Remanding the matter back to the original Court may be an easy way out for the Appellate Courts, however, such a procedure in the absence of any sound principles cannot be appreciated by the High Courts. The Courts are expected to be cautious while remanding the matter. When the Courts are vested to the power to decide the matter on merits in all circumstances, such Courts are expected to exercise its power in order to provide complete justice to the parties who are all approaching the Court of law. Contrarily, remanding the matter back would lead to prolongation and would cause injustice on account of long delay in delivering the judgment. Speedy disposal of the cases are eminent as the people in general as citizen of our great nation are slowly losing trust on the judicial system more specifically in the matter of civil litigations. The litigants are mostly frustrated on account of long pendency of civil cases and appeals before the Courts. In most of the civil litigations, the person who instituted the suit may not be alive to see the light of the same. When the matter is decided, the practice of prolongation of the civil litigation is to be cut short by disposing of the matter in the speedy manner and by avoiding such unnecessary remands and unwanted adjournments. The practice of taking adjournments on flimsy grounds are to be declined by the Court in all circumstances. The Courts are expected to be vigilant in disposing of the matter especially the civil suits are pending for long years.

6. 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 the 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.

7. Order 20 Rule 5 of the Code of Civil Procedure contemplates the Court to state its decision on each issue. The provision reads that the suits in which issues have been framed, the court shall state its finding or decision, with the reasons there for, upon each separate issues, unless the finding upon any one or more of the issues is sufficient for the decision of the Suit. Therefore, it is not necessary that all the issues framed by the trial Court are to be discussed elaborately. In all circumstances when the first issue which is vital to continue the suit proceedings are decided in either way, then the Court can arrive a conclusion for the purpose of deciding the suit itself.

8. For example in the suit for specific performance, agreement for sale is a vital document which is relied upon for the purpose of granting the relief of specific performance. In the absence of the sale agreement, it is not possible for the Courts to grant relief of specific performance. Thus, if the sale agreement is found to be null and void or fraudulent or fabricated and the factum is established with strong evidence, the trial Court is empowered to decide the suit on such issues without going into the further discussion with reference to the other issues of readiness and consideration etc. Such a procedure is already approved by the Code of Civil Procedure. Therefore, the first Appellate Court is wrong in arriving the conclusion that the trial Court must decide all the issues elaborately even after arriving at a conclusion that the suit sale agreement is invalid and fabricated.

9. In view of the fact that the first Appellate Court instead of deciding the matter on merits, remanded back the matter for retrial on the ground that the trial Court has not elaborately discussed all the issues the same found to be not in consonance with the established principles as well as the provisions of the Code of Civil Procedure cited supra. Accordingly, the judgments and decrees dated 22.06.2017 passed in A.S.Nos.113, 114, 115 & 116 of 2016 are set aside and the Civil Miscellaneous Appeals are allowed. The first Appellate Court is directed to dispose of the Appeal Suits by affording opportunity to all the parties and if necessary to take further evidence or by framing additional issues or otherwise and decide the matter on merits and in accordance with law preferably within a period of six months from the date of receipt of a copy of this order.

10. 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 readily 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 petitions are closed.

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-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Principal District Court,
Erode.

2.The II Additional Sub Court,
Erode.

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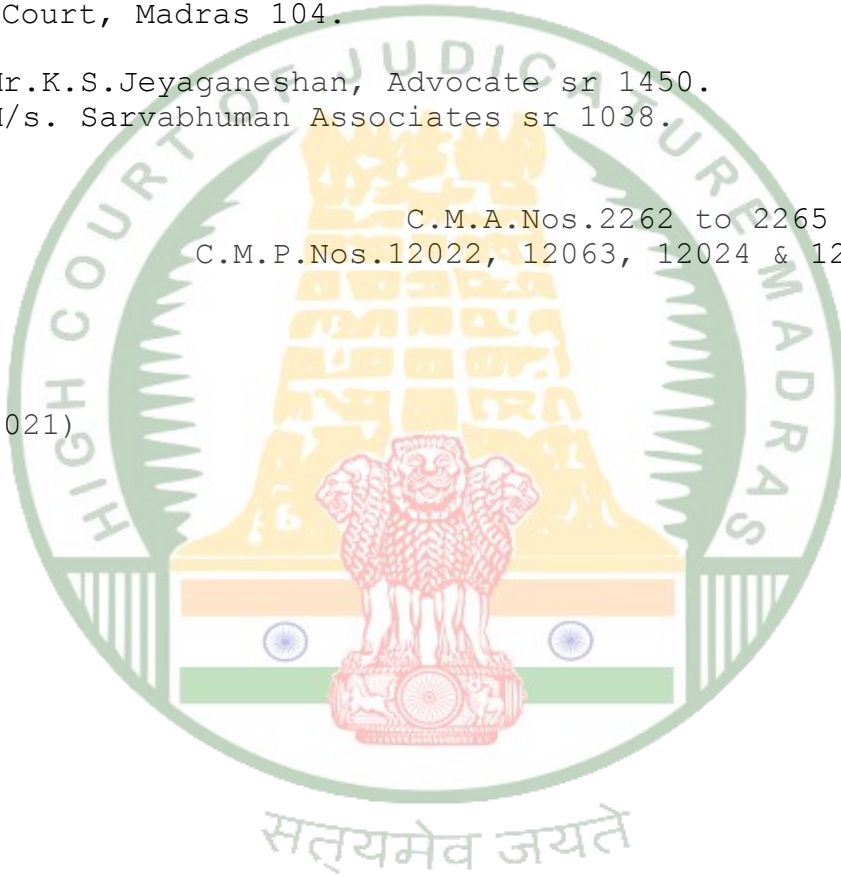
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K.S.Jeyaganeshan, Advocate sr 1450.

+1 CC to M/s. Sarvabhuman Associates sr 1038.

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PPA (CO)
SP(11/02/2021)



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