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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

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

C.M.A.No.383 of 2017 and
C.M.P.No.2738 of 2017

Gilgal Gospel Mission,
Rep by its President & Secretary,
No.22, College Road,
I.D.S.Nagar, Kovilpathagai,
Chennai 62.

... Appellant/Ist Defendant

Vs.

1.R.S.Gopalan

2.R.Krishnan

3.T.S.Vishnu Priya
rep by their Power Agent R.Sampath ...Respondents/Plaintiffs

4.The Tahsildar,
Ambattur Taluk,
Ambattur, Chennai 53. ...Respondent/2nd Defendant

Prayer : Civil Miscellaneous Appeal filed under Order 43(1)(c) of C.P.C., against the decree and judgment passed on 28.11.2016 in A.S.No.41 of 2014 on the file of the District Judge, Thiruvallur which is the appeal filed against the decree and judgment passed on 24.06.2011 in O.S.No.36 of 2006 on the file of the Sub Ordinate Judge, Poonamallee.

For Appellant : Mr.R.Rajesh Kumar

For Respondents : Mr.M.S.Jaganathan G.A (CS)

J U D G M E N T

The judgment and decree dated 28.11.2016 passed in A.S. No.41 of 2014, is under challenge in the present civil miscellaneous appeal.

2. The suit was instituted by the respondents 1 to 3 herein for declaration and mandatory injunction. The suit was decreed in favour of the respondents 1 to 3 herein. The defendants



preferred A.S.No.41 of 2014 and the Appellate Court remanded the matter back to the Trial Court to decide the matter afresh by framing additional issues, by an order dated 28.11.2016. Challenging the said judgment, the present appeal is filed.

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3. The learned counsel for the appellant mainly contended that the first Appellate Court itself has got powers to frame additional issues, if necessary, by accepting the additional documents and examine the witnesses, if required and decide the appeal suit on merits by affording opportunity to the parties concerned. Contrarily, the first Appellate Court unnecessarily remanded the matter back to the Trial Court which would cause prejudice to the interest of the parties. The suit was instituted in the year 2006 and the first appeal was filed in the year 2014 and now, even after a lapse of 14 years, the issues are still pending and not reached the finality.

4. This Court is of the considered opinion that under Section 107 of C.P.C., the appellate Court is empowered to receive additional documents and frame issues and decide the matters finally. Order 41 Rule 23 and 23(A) shall be invoked by the Appellate Court only when Rule 24 cannot be invoked. If Rule 24 of Order 41 can be invoked by the first Appellate Court by deciding the matter finally, it is not preferable to invoke Rule 23 and 23(A) of Order 41.

5. In all circumstances, the first appellate Court is expected to decide the matter finally by adjudicating the issues on merits and only on exceptional circumstances, an order of remand may be passed. In the event of remand, the litigations are not only prolonged, the same would cause prejudice to the interest of the parties. The re-adjudication of the same issues before the Trial Court would frustrate the minds of the litigants. Therefore, the first Appellate Court has to look into the evidence and the documents which are adjudicated by the first Appellate Court and if the documents and evidence are adjudicated, then, the first appellate Court shall decide the matter finally without remanding the matter back to the Trial Court.

6. The Appellate Court is well within its powers to accept the additional documents and examine the witnesses and appoint Commissioner, if necessary, to survey the property etc. When all such powers are vested with the first Appellate Court, there is no reason to remand the matter back to the Trial Court for framing additional issues or to reconsider the documents. Appreciation of documents by the Trial Court if found to be wrong, the appellate Court can reappraise the documents and evidences.



7. This being the wider scope provided under C.P.C., for the Appellate Court to decide the matter finally, the Appellate Courts need not remand the matter for the purpose of framing of additional issues which would certainly create longevity to the litigations.

8. This Court is of the considered opinion that the present appeal suit is to be decided on merits, if necessary, by recasting the issues or by framing additional issues or by accepting the additional documents or by examining the witnesses.

9. Accordingly, the judgment and decree dated 28.11.2016 passed in A.S.No.41 of 2014 is set aside and C.M.A.No.383 of 2017 stands allowed. The first Appellate Court is directed to dispose of the appeal suit on merits and in accordance with law by affording opportunity to all the parties concerned by framing additional issues or by recasting the issues or by accepting additional documents or by examining witnesses etc. The said exercise is directed to be done within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

10. The parties to the suit are directed to cooperate for the earlier disposal of the suit. The Trial Court should decline unnecessary adjournments on flimsy grounds if sought for by the parties to the suit. The adjournments sought are to be granted only on genuine grounds and by recording reasons. Thus, the Trial Court is expected to proceed with the case without granting any unnecessary adjournments either at the instance of the parties or by the Courts.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The District Judge,
Thiruvallur.

2.The Subordinate Judge,
Poonamallee.



Copy to

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

+1cc to the Additional Government Pleader Sr.3811

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