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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.2810 of 2018
and
C.M.P.No.21440 of 2018

G.S.JeyaGopal Chettiar

.. Appellant/Plaintiff

Vs.

1.Syed Yusuf
2.Basha Sahib
3.Gandhi
4.Guna
5.Manickam

.. Respondents/Defendants

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 rule 1(r) of Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge of Uthangarai, dated 30.11.2017 in A.S.No.13 of 2016 set aside the Judgment and Decree of the learned District Munsif cum Judicial Magistrate, Pochampalli, dated 22.08.2012 in O.S.No.5 of 2011 and remanding the suit to the trial Court.

For Appellant : Mr.J.Hariharan

For Respondents

For R1, R2 & R5: No appearance

For R3 & R4 : Mr.P.Mani

J U D G M E N T

The appellant herein is the plaintiff who filed a suit in O.S.No.5 of 2011 on the file of the District Munsif cum Judicial Magistrate, Pochampalli, against the respondents/defendants, for the relief of declaration and other consequential reliefs.

2. The defendants contested the suit.

3. After full trial, the trial Court decreed the suit granting the relief in favour of the plaintiff. Aggrieved by the decree, the defendants preferred an appeal in A.S.No.13 of 2016



before the Subordinate Court Uthangarai. On hearing both sides, the learned Appellate Judge remanded the entire case to the trial Court with a direction to cross-examine the witness of the plaintiff and also permitted the 1st defendant to adduce the evidence and documents on his side and set aside the order passed by the trial Judge. Aggrieved by the order of the appellate Court, the appellant / plaintiff has preferred the present appeal before this Court.

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

"whether the order of remand passed by the Lower Appellate Court is as such maintainable in law ?"

5. On perusal of the evidence as well as the records, it reveals that the appellant / plaintiff filed a suit for declaration and other consequential reliefs against the respondents. As per the plaint averments the plaintiff had purchased the properties for a valid sale consideration in the year 2003, and was in peaceful enjoyment of the suit properties. But the defendants colluded together with the third parties caused interference with the plaintiff's enjoyment, by removing the trees in the suit properties unnecessarily. Hence, the suit.

6. The defendants 1 and 3 have filed their written statement, in which, they denied the plaintiff's right over the suit properties and contested the suit.

7. Before the trial Court, the plaintiff was examined as P.W.1 and he has produced documents Ex.P.1 to Ex.P.10. Whereas on the side of the defendants, no evidence was examined and no documents marked.

8. During the trial, on 20.07.2012, the plaintiff / P.W.1 was Chief-examined and on that day, the counsel for the defendants 1 to 4 sought time, as they have not got any instructions from the parties, however D.W.5 alone was cross examined. The trial Court decreed the suit in favour of the plaintiff.

9. The learned counsel for the respondent argued that since the plaintiff approached the court for a relief of declaration, he has to establish his right and title over the properties and also should give opportunities to the defendants to cross examine plaintiff's witness and to submit their evidence to prove their defence. However, the learned trial Judge voluntarily discussed the facts and circumstance of the case, without considering the evidence, which is unsustainable in law. It is further contended by the defendants that no due



opportunities was given to him and during trial, the alleged sale deed is a sham and nominal document in the name of plaintiff's, and prayed that necessary opportunities to cross examine the plaintiff's witness, as well as to adduce the evidence on his side, may be granted to them.

10. On a perusal of the judgment and decree passed by the trial Court the suit was decreed in favour of the plaintiff by granting the relief of declaration based upon the written statement filed by D1 and D3 and with an evidence of P.W.1 alone. The trial Judge by relying the evidence of P.W.1 alone decreed the suit in favour of the plaintiff.

11. However, mere written statement alone is not sufficient and there must be an evidence to substantiate the contention of the written statement. So the First Appellate Judge rightly conclude that it is error on the face of the record, remanded the matter to the trial court. Therefore the order of the remand passed by the Lower Appellate Court is a reasonable one and opportunities may be given to the defendants to cross examine the witness of plaintiff and to adduce the evidence on the side of the defendants is justifiable one.

12. Hence, the question of law is answered against the appellant. Accordingly, this Civil Miscellaneous Appeal is dismissed and the order and decree passed in A.S.No.13 of 2016 is hereby confirmed and the matter is remanded to the trial Court. The trial Court is directed to dispose of the suit in O.S.No.5 of 2011 within a period of three months from the date of receipt of copy of the judgment. Consequently connected Civil Miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif cum Judicial Magistrate,
Pochampalli.

2.The Subordinate Judge,
Uthangarai.

3.The Section officer,
V.R.Section, High Court,
Madras-104.



+1cc to Mr.V.Nicholas, Advocate, S.R.No.19876

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GP (CO)
CB (22/09/2021)

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