



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1850 of 2021
and
CMP.No.9969 of 2021

1.Yasodha

2.Baskaran

3.Samundeeswari

All are legal heirsof Late C.Govindan, who was the
plaintiff in O.S. And sole defenant Apeal suit.

(Causes title accepted vide Court order dated 28.04.2021
made in CMP.No.8031 in CMASr.No.11056 of 2021) ...Appellants

Vs.

1.R.Umarani

B.Ranganathan (died)

2.D.Gnanasundari

3.R.Ravikumar

4.S.Prabavathi

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1
of the Code of Civil Procedure, against the judgment and decree
dated 06.11.2020 passed in AS.No.34 of 2018 by the IV-Additional
District Judge, Ponneri by reversing the judgment and decree
dated 07.02.2018 passed by the Sub-ordinate Judge, Ponneri in
OS.No.93 of 2009.

For Appellant : Mr.R.Sreedhar

For Respondents: Mr.V.Prakash, Senior Counsel for
Mr.V.Manohar for R2 to R4



J U D G M E N T

The legal representatives of the sole defendant in OS.No.93 of 2009, a suit for declaration of title and consequential injunction are on appeal.

2.The order under challenge is an order for remand made by the Appellate Court in AS.No.34 of 2018. The Trial Court, by its judgment and decree dated 07.02.2018 dismissed the suit, on the conclusion that the plaintiffs have not proved their title to the suit property. Aggrieved, the plaintiffs preferred an appeal in AS.No.34 of 2018.

3.The learned Appellate Judge, has set aside the judgment and decree and remitted the matter to the Trial Court, mainly on the ground that the report of the Revenue Inspector along with a plan and Surveyor's Report, which was produced before the Trial Court on 03.11.2011 has not been considered by the Trial Court though the Document was part of the records of the Trial Court. The Appellate court also opined that there appears to be a conflict between the Advocate Commissioner's Report and the Surveyor's Report. A remand can be made by the Appellate Court under Order 41 Rule 23 of CPC., if the suit had been disposed on a preliminary point. That is not the case on hand. The suit has been disposed of, after complete trial and the Trial Court had rendered its findings on all the issues that were raised before it. Therefore, unless the case falls within Order 41 Rule 23-A, the remand cannot be justified. The reason for remand namely, non-consideration of a particular document, which was available to the Court cannot be a ground for remand under Order 41 Rule 23-A of CPC.

4.The Appellate Court, as a final Court of fact has got every power and authority to consider a document that has not been considered and decide the issues on its own without resorting to remand. The order of remand, which does not satisfy the requirement of Order 41 Rule 23 or 23-A of CPC., cannot be sustained by this Court. Non-consideration of a piece of evidence by the Trial Court cannot be a ground for remand, unless the Appellate Court comes to the conclusion that such non-consideration has vitiated the entire judgment of the Trial Court. Such is not a case on hand, the Appellate Judge has pointed out certain discrepancies between report of Commissioner, who was also assisted by the Surveyor and a report filed by the Revenue Inspector along with a plan and report of the Surveyor. Those discrepancies by themselves would not invalidate the findings of the Trial Court, so as to enable the



Appellate Court to set aside the judgment of the trial court without examining the correctness of the same.

5.I am therefore, of the view that the order of remand cannot be sustained and the same is set aside. The Appellate Court is directed to take into consideration the report of the Revenue Inspector, which has been referred to by it and decide the matter on merits. It will be open to the Appellate Court to take evidence on the document also. The Appellate Court will ensure that the directions it has issued in Paragraph 16 of the order in the appeal will be followed by it. This civil miscellaneous appeal is therefore, allowed, the order of remand is set aside. No costs. Consequently, connected miscellaneous petition is closed. The Appellate Court is directed to dispose of the appeal within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

kkn

To:-

1.The IV-Additional District Court,
Ponneri.

2.The Sub-Court,
Ponneri.

Copy to

The Section Officer

VR Section

High Court, Madras 104.

+2 Ccs to Mr.R.Sreedhar, Advocate sr 1485.

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SSV(CO)
SP(15/02/2022)