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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA Nos. 1150, 1162 & 1165 of 2021

And

C.M.P.Nos. 5887, 5942 & 5943 of 2021

C.M.A.No. 1150 of 2021

1. C.Srinivasa Reddy

2. K.C.Chinnamuni Reddy ... Plaintiffs/Respondents 1 &
2/Appellants in C.M.A

Appellants/Respondents 1 & 2/Plaintiffs

Vs

1. Raja Reddy

... 2nd Defendant/Appellant/1st Respondent
1st Respondent/Appellant/2nd Defendant

Thimma Reddy (died)

2. Thimmakka

3. Chenna Reddy

4. Savithriamma

5. Srinivasa Reddy

6. Narayanamma

7. Rashmi

8. Shilpa

9. Jayarama Reddy

10. Chemammal



11. Chennamma @ Pillamma

12. Gowramma ... Defendants 2-13/Respondents 4- 14/
Respondents 2 to 12

(The Respondents 2 to 6 have remained exparte before the Lower Court and hence notice may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 43 Rule 1(U) of the Code of Civil Procedure, to set aside the Judgment and decree dated 11.01.2021 made in A.S.No. 9 of 2015 on the file of Additional Sub Court, Hosur, setting aside the Judgment and decree dated 23.12.2014 in O.S.No. 54 of 1999 on the file of the District Munsif Court, Hosur.

C.M.A.No. 1162 of 2021

N. Srinivasa Reddy ... Plaintiff/ 1st Respondent/
Appellant in C.M.A

Vs

1.Raja Reddy ... 3rd Defendant/Appellant/1st Respondent

Thimma Reddy (died) 2nd Defendant in A.S

2. Chenna Reddy

3. Jayarama Reddy

4. Thimmakka

5. Chennamma

6. Pillamma

7. Gowramma

8. Savithriamma

9. Srinivasa Reddy

10. Narayanamma

11. Rashmi



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12. Shilpa

... Defendants 2, 4 to 13/Respondents 3-13/Respondents 2 to 12

13. C.Srinivasalu

14. S.Manjula ... Not parties in suit/Respondents 14 & 15
Respondents 13 & 14

[The respondents 2 and 4 have remained
Exparte before the Lower Court and hence notice to them
may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 43 Rule 1(U) of the Code of Civil Procedure, against the Judgment and decree dated 11.01.2021 in A.S.No. 7 of 2015 on the file of Additional Sub Court, Hosur, setting aside the Judgment and decree dated 23.12.2014 in O.S.No. 94 of 2004 on the file of the District Munsif Court, Hosur.

C.M.A.No. 1165 of 2021

K.C. Pedda Muni Reddy @
K.C.Muni Reddy (since Deceased)

... 1st Plaintiff/ 1st Respondent

1. M.Ravindra Reddy

2. M.Harisha

3. M.Suresh ... Plaintiffs 2 to 4/Respondents 2 to 4/Appellants in C.M.A

Vs

1.Raja Reddy

... 3rd Defendant/Appellant/1st Respondent

Thimma Reddy (died)

5th Respondent in A.S.

2. Chenna Reddy

3. Jayarama Reddy

4. Thimmakka



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5. Chennamma
6. Pillamma
7. Gowramma
8. Savithriamma
9. Srinivasa Reddy
10. Narayanamma
11. Rashmi
12. Shilpa ... Defendants 2, 4 to 13/Respondents 6-16/Respondents 2 to 12

[The respondents 6 to 8, 13 & 14 have remained Exparte before the Lower Court and hence notice to them may be dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 43 Rule 1(U) of the Code of Civil Procedure, against the Judgment and decree dated 11.01.2021 in A.S.No. 8 of 2015 on the file of Additional Sub Court, Hosur, setting aside the Judgment and decree dated 23.12.2014 in O.S.No. 95 of 2004 on the file of the District Munsif Court, Hosur.

For Appellants in
all C.M.As. : Mr. D.Sivakumaran

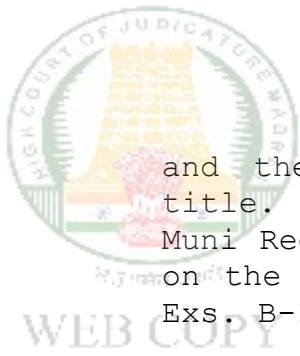
For Respondents in
all C.M.As. : Mr.T.Sezhian
for M/s. R. Meenal

C O M M O N J U D G M E N T

Challenge in these Appeals is to the order of remand made by the Appellate Court in A.S.Nos. 7, 8 & 9 of 2015.

2. The suits in O.S.No. 94 of 2004; O.S.No.54 of 1999 and O.S.No. 95 of 2004 have been filed by the appellants herein as plaintiffs seeking declaration of title and permanent injunction.

3. The suits were resisted by the defendants contending that their ancestors are also entitled to the suit properties



and therefore, there cannot be a decree for declaration of title. At trial, the plaintiff was examined as PW-1 and one Muni Reddy was examined as PW-2 and Exs. A-1 to A-55 were marked on the side of the defendants and DWs 1 to 4 were examined and Exs. B-1 to B-14 were marked on the side of the defendants.

4. The learned District Munsif would tried the suits by a common Judgment dated 23rd December 2014 decreed the suit. Aggrieved, the defendants preferred three appeals in A.S.Nos. 7, 8 and 9 of 2015.

5. Before the Appellate Court, the appellants also sought to file a genealogical tree and 'A' Register to establish their right over the suit property. The learned Appellate Judge upon consideration of the evidence on record found that the trial Court had not adverted to the documents produced by the defendant and it has not considered, the evidence on the record as a whole. The learned Appellate Judge also concluded that the production of a genealogical tree is very important and when the appellant seeks to produce the genealogical tree and 'A' Register, the matter needs to be revisited by the trial Court.

6. The Appellate Court found that the production of additional documents and the fact that the trial Court had not adverted to the documents produced by the defendants while disposing of the suit would offer a ground to set aside the Judgment of the trial Court and remit the matter to the trial Court to consider in accordance with law.

7. Mr.D.Sivakumaran, learned counsel appearing for the appellant would vehemently contend that the trial Court was not right in allowing the appeals and remanding the matters to the Trial Court as the same would further drag on the proceedings. He would also point out that the remand cannot be made merely for the purpose of production of documents, namely, the genealogical tree and the 'A' Register. He would also point out that the genealogical tree has been filed along with the written statement but the same has not been marked.

8. Contending contra Mr. T.Sezhian, learned counsel for the respondent would submit that the Appellate Court was justified in remanding the matter to the trial Court in as much as the trial Court has not considered the suit in the proper perspective. Drawing my attention to the Judgment of the trial Court, Mr. T.Sezhian, would submit that the trial Court had not considered the documents produced before it by the defendants at



any point of time. He would also submit that since the trial Court has not considered the documents filed by the defendants and the effect of the title set up by the defendants, the Appellate Court was justified in remitting the matter for reconsideration.

9. A perusal of the Judgment of the trial Court shows that the trial Court has not applied its mind to the effect of documents. Except merely referring to the documents that has been produced and faulting the defendants for not producing certain documents, the trial Court has not rendered any specific finding regarding the title of the plaintiff. A close reading of the Judgment would show that the plaintiffs' suit has been decreed because of the failure on the part of the defendants in proving their case.

10. Before the Lower Appellate Court, the appellant/defendant had sought for producing certain documents and as well as the genealogical tree. The Appellate Court also felt that an order of remand would be essential in order to enable the appellants to produce the genealogical tree. No doubt the remand must confirm to the requirements of Order 41 Rule 23 or Order 41 Rule 23(a). The case on hand would not come under the sweep of order 41 Rule 23 since the trial Court had not disposed of the suit on a preliminary point.

11. The case on hand would fall under Order 41 Rule 23(a) which enables remand in other cases. As already pointed out, the trial Court has not rendered any finding on the effect of the documents and title of the respondent/plaintiff. The learned Judge has merely discussed the documents and granted a decree on the basis of the failure on the part of the defendants to establish the title. Considering the manner in which suits have been disposed of by the trial Court without rendering any specific finding on the effect of the documents and the title of the plaintiff, I am of the opinion that the remand order would only sub-serve the ends of justice.

12. Hence, I do not think the order of the remand should be disturbed.

13. The Lower Appellate Court while remanding the matter has given permission to the parties to lead evidence. Therefore, I do not think any prejudice would be caused to the appellants because of the order of the remand. I therefore do



not see any merit in the Appeals and the Appeals are therefore dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

14. The trial Court shall ensure that the suits are disposed of within a period of six months from the date of receipt of the order and receipt of the records from the Registry of this Court.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

vsg
To

1. The Additional Sub Court,
Hosur.
2. The District Munsif Court,
Hosur.
3. The Section Officer,
VR Section,
Madras High Court, Chennai.

+3cc to Mr.D.Shivakumaran, Advocate Sr.1324 to 1326
+3cc to M/s.R.Meenal, Advocate Sr.1287 to 1289

CMA Nos. 1150, 1162 & 1165 of 2021
And
C.M.P.Nos. 5887, 5942 & 5943 of 2021

spd[col]
srg 16/03/2022