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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	31.01.2022
DELIVERED ON	11.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .Nos.1290 & 1291 of 2012
and M.P. (MD)No.1 of 2012

C.M.A. (MD) .No.1290 of 2012

1.Sekar
2.Durairaj
3.Kandasamy
4.Rathinam
4/Plaintiffs

...Appellants/R-1 to R-

Vs.

1.Ganesan
2.Rayappan

...R-1/Appellant/2nd Defendant
...R-2/5th Respondent/1st Defendant

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of Code of Civil Procedure, to set aside the order of remand passed by the learned Additional Subordinate Judge, Thanjavur, in A.S.No.50 of 2011, dated 28.03.2012 by setting aside the Judgment and Decretal order made in O.S.No.114 of 2008, dated 21.03.2011 on the file of the learned District Munsif Court, Thanjavur, and allow the appeal.

For Appellants	:Mr.G.Karnan
For R-1	:Mr.P.Vadivel
For R-2	:No appearance

C.M.A. (MD) .No.1291 of 2012

1.Durairaj
2.Kandasamy

...Appellants/R-1 & R-2/D-1 & D-2
Vs.

Ganesan

...Respondent/Appellant/Plaintiff

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of Code of Civil Procedure, to set aside the order of remand passed by the learned Additional Subordinate Judge, Thanjavur, in A.S.No.51 of 2011, dated 28.03.2012 by setting aside the Judgment and Decretal order made in O.S.No.274 of 2008, dated 21.03.2011 on the file of the learned District Munsif Court, Thanjavur, and allow the appeal.

For Appellants	:Mr.G.Karnan
For Respondent	:Mr.P.Vadivel



COMMON ORDER

These Civil Miscellaneous Appeals have been filed to set aside the order of remand passed by the learned Additional Subordinate Judge, Thanjavur, in A.S.Nos.50 & 51 of 2011, dated 28.03.2012 by setting aside the Judgment and Decreetal order in O.S.Nos.114 & 274 of 2008, dated 21.03.2011 on the file of the learned District Munsif Court, Thanjavur,

2.The parties are referred to as per the rank mentioned before the Court below.

3.Originally, the suit in O.S.No.114 of 2008 was filed to declare that the settlement deed executed by the 1st and 2nd defendants in favour of the 2nd defendant, dated 29.06.2007 as Null and Void.

4.The 2nd defendant in O.S.No.114 of 2008 has filed a suit in O.S.No.274 of 2008 for permanent injunction.

5.The learned District Munsif, Thanjavur, has decreed the suit in O.S.No.114 of 2008 and dismissed the suit in O.S.No.274 of 2008. The 2nd defendant in O.S.No.114 of 2008 has preferred an appeal in A.S.No.50 of 2011 against the Judgment and Decree in O.S.No.114 of 2008 and A.S.No.51 of 2011, against the Judgment and decree in O.S.No.274 of 2008.

6.The learned Appellate Court has set aside the Judgment and Decree in both the cases and remanded the suits in O.S.Nos.114 & 274 of 2008 to the trial Court with directions. The learned trial Court has directed the parties to amend the prayer and declaration of title since there is cloud on the title. Aggrieved over the same, the Civil Miscellaneous Appeals have been filed.

7.Heard on either side. Perused the material documents available on record.

8.The trial Court has decided the matter without deciding the title to the suit property. Both the parties have claimed title over the property. But, neither of them have filed suit for declaration. Without seeking declaration of title, the Court cannot decide the real issues.

9.Further, the learned District Munsif, Thanjavur, has also decreed the suit in O.S.No.114 of 2008 on the ground that the plaintiffs in O.S.No.114 of 2008 are Nattamai as per the documents produced by them. The Court below cannot decide that whether the property belonged to the temple and the 1st defendant has no right to execute the sale deed.

10.Therefore, the Appellate Court has rightly passed the remand



11.The learned counsel appearing for the appellants has replied upon the Judgment reported in **2010 0 Supreme (Mad) 121, R.Shantha vs. Ramasamy Gounder and Others**, in which this Court held as follows:

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....
"7.Remanding the matter back to the original Court may be an easy way 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 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."

But, the facts of the reported Judgment is different and this Judgment is not applicable to this case on hand.

12.In the case of **L.C.Hanumanthappa Vs. H.B.Shivakumar in S.L.P. (civil) No.15513 of 2015**, the Hon'ble Supreme Court has held as follows:

....
"9.After remand, by its Judgment and decree dated 16th April, 2009, the City Civil Court at Bangalore decreed the suit in O.S.No.1386 of



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1990. It turned down the plea of limitation by stating that since in the original written statement the defendant had admitted the title of plaintiff Hanumanthappa, and only in the written statement dated 1st August, 2002 was title denied for the first time after the amendment of the plaint was moved, the relief of declaration claimed by the plaintiff would be within the period of limitation.

10. In R.F.A.No.796 of 2009, by the impugned judgment dated 5th March, 2015, the High Court reversed the said judgment on limitation stating that the original written statement filed on 16th May 1990 had clearly stated that the plaintiff did not have the necessary title to the suit schedule property, and as the amendment of the plaint was moved long after three years from 16th May 1990, it was clear that it was time barred. O.S.No.1386 of 1990 was thus dismissed on limitation alone. The High Court also turned down the plea with reference to Section 22 of the Limitation Act, 1963 stating that on the facts of the present case limitation could not be extended because the wrong in the present case was not a continuing wrong."

13. Since the appeal is continuous to suit the prayer is within the time. The Appellate Court has also issued direction to amend the plaint.

14. The learned District Munsif, Thanjavur, is directed to give sufficient opportunities to the defendants for filing written statement to contest the case.

15. Finally, these Civil Miscellaneous Appeals are dismissed by confirming the remand order, dated 28.03.2012 in A.S.Nos.50 & 51 of 2011, passed by the learned Additional Subordinate Judge, Thanjavur. The learned District Munsif, Thanjavur, is directed to dispose the suits in O.S.Nos.114 & 274 of 2008, within a period of six months, from the date of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

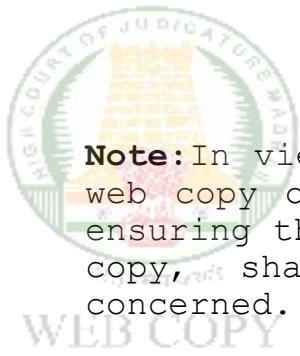
Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar (CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Additional Subordinate Judge, Thanjavur.

2.The District Munsif,
Thanjavur.

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.P.VADIVEL, Advocate (SR-5651,5652[F] dated
11/02/2022)

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RK(02/03/2022) 5P 7C