



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.989 of 2021

and

C.M.P(MD)No.9284 of 2021

Venkateshwaran,
Son of Narayanasamy,
represented through his power of Agent
Krishnamurthi. :Appellant/Respondent/Plaintiff

.vs.

1.Ponnaiyan

2.Ayyapattu @ Seenivasan

:Respondents/Appellants/Defendants

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(U) of the Civil Procedure Code against the judgment and decree passed in A.S.No.48 of 2018, dated 24.08.2021, on the file of the Additional District and Sessions Court, Srivilliputhur insofar as the remanding the suit in O.S.No.269 of 2010 on the file of Sub-Court, Srivilliputhur for fresh disposal by setting aside the judgment and decree of the suit dated 5.7.2018.

For Appellant :Mr.H.Arumugam

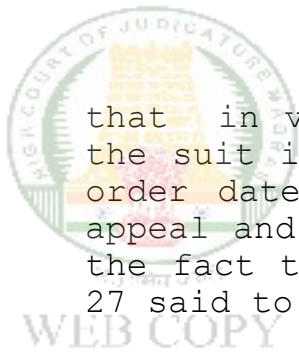
For Respondents :Mr.VR.Shanmuganathan
1 and 2

JUDGMENT

The plaintiff in the suit in O.S.No.269 of 2010 is the appellant herein.

2.For the sake of convenience, the parties are referred to as per their ranking before the Court below.

3.The Plaintiff has filed a suit for declaration of title and based upon the batta and the FMB Sketch indicates thereto in the sketch, a larger extent of land is mentioned, but in the patta, only a lesser extent is mentioned. Citing so, the trial Court has held



that in view of larger extent is mentioned in the sketch, decreed the suit in favour of the defendants and in A.S.No.48 of 2018, by order dated 24.08.2021, the lower appellate Court has allowed the appeal and remitted the matter back to the trial Court considering the fact that I.A.No.1 of 2019 which is filed under Order 41 Rule 27 said to be a joint patta, claims to be anterior in time.

4.After going through the order passed by the lower appellate Judge, I find that the order of remand is not unsustainable.The order of remand in A.S is hereby set aside. The learned counsel for the respondents/defendants draw my attention to the fact that the patta now filed in the appellate stage by invoking Order 41 Rule 27 of C.P.C will determine the issue and hence he may be required to adduce oral evidence before the lower appellate Court.The submissions of the defendants have been taken into consideration.

5.Per contra, the plaintiff would submit that the lower appellate Court has enough powers to consider the additional evidence before the lower appellate Court, by invoking the procedure as contemplated under Order 41 Rule 28 of the Civil Procedure Code.

6.Taking into consideration the facts in a narrow campus involving in this appeal, the Civil Miscellaneous Appeal is allowed and the judgment and decree made in A.S.No. 48 of 2018, dated 24.08.2021, on the file of the Additional District and Sessions Court, Srivilliputhur is set aside and the matter is remanded back to the District Court, stand transferred to the file of the Principal District and Sessions Judge, Srivilliputhur and the Principal District Judge shall consider the I.A.No.1 of 2019 filed under Order 41 Rule 27 of C.P.C for reception of documents, after giving an opportunity of hearing to the other side. If any application is filed for reception of additional evidence on the appellate stage and hence the Principal District Judge, Srivilliputhur is hereby directed to deal with A.S.NO.48 of 2008 and I.A.No.1 of 2019 and pass orders on the same, on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order. Since the matter is remitted back to the Court below, I am not expressing any opinion on the merits of the matter. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)



To

1.The Principal District and Sessions Judge,
Srivilliputhur.

2.The Additional District and Sessions Judge,
Additional District and Sessions Court,
Srivilliputhur.

3.The Sub-Judge,
Sub-Court,
Srivilliputhur.

Copy to

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

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