



WEB COPY



C.M.A.Nos.2366 & 3321 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.Nos.2366 and 3321 of 2008

CMA No.2366 of 2008

1.Jayalakshmi (deceased)
2.Venkatesan
3.V.Krishnan
4.Thulasingham
5.Loganathan
6.Selvi
(Appellants 4 to 6 were brought
on record as legal heirs of the
deceased 1st appellant as per the
order of this court dated 24.11.2009
made in M.P No.1 of 2009)

..Appellants

Vs.

D.Balliah

..Respondent

1/11



C.M.A.Nos.2366 & 3321 of 2008

CMA No.3321 of 2008

WEB COPY

D.Balliah

.. Appellant

Vs.

1.Jayalakshmi

2.Venkatesan

3.V.Krishnan

4.Thulasingham

5.Loganathan

6.Selvi

(Respondents 4 to 6 were brought on record as legal heirs of the deceased respondents 1 & 2 as per the order of this court dated 12.06.2023 made in CMP No.27594 of 2019)

.. Respondents

Common Prayer : Civil Miscellaneous Appeals filed under Order 43 Rule 1 (u) of CPC, to set aside the judgment and decree dated 03.01.2008 in A.S.No.459 of 2004 on the file of the V Additional Judge, City Civil Court, Chennai reversing judgment and decree dated 17.09.2003 and made in O.S No.934 of 1999 on the file of XVIII Assistant Judge, City Civil Court and remanding the suit O.S No.934 of 1999 to the file of XVIII Assistant Judge, City Civil Court, Chennai.



C.M.A.Nos.2366 & 3321 of 2008

For Appellants in CMA No.2366/2008 &
Respondents 1 to 3 in CMA.3321/2008 : Mr.N.Ishtiaq Ahmed

For Respondent in CMA No.2366/2008
& Appellant in CMA No.3321/2008 : Mr.V.Manisekaran

COMMON JUDGMENT

The Judgment and Decree passed in A.S.No.459 of 2004 dated 03.01.2008 is under challenge in the present Civil Miscellaneous Appeals.

2. The appellants 1 to 3 in CMA No.2366 of 2008 and respondents 1 to 3 in CMA No.3321 of 2008 are the defendants in the suit and the respondent in CMA No.2366 of 2008 and appellant in CMA No.3321 of 2008 as plaintiff instituted the suit for declaration, permanent injunction, mandatory injunction and for costs. The suit was dismissed and the plaintiff had filed first appeal in A.S No.459 of 2004.

3/11



C.M.A.Nos.2366 & 3321 of 2008

The first Appellate Court remanded the matter back to the trial Court for re-trial and challenging the same, the present Civil Miscellaneous Appeals are filed.

3. The question arises whether the remanding of the matter is in accordance with the established principles or not?

4. Section 107 of CPC enumerated that the Appellate Court shall have the power to determine the case finally. Even the Appellate Court is empowered to take additional evidence or to require such other evidence to be taken.

5. At the outset, it is contended that the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein. Thus, the appeal suit is



C.M.A.Nos.2366 & 3321 of 2008

in continuation of the original civil suit and the first Appellate Court is empowered to examine the witnesses by framing additional issues if necessary instead of remanding the matter back to the trial Court. Remanding the matter may be an easy way for the Courts. However, such practice is never appreciated in the absence of sound reasons and on concrete grounds. Mere remanding the matter would cause greater prejudice to the parties to the litigation. In the event of remand, the parties again have to go to the trial Court and contest the case and thereafter, file an appeal before the first Appellate Court. The said process would take long time and therefore, such protraction and prolongation of the litigation are to be avoided as far as possible.

6. Keeping the above principle in mind, considering the order impugned in the present Civil Miscellaneous Appeals, the findings of the Appellate Court in para 26 & 27 of the judgment reads as under:



WEB COPY

26..... *The plaintiff admits that the purchase of the second schedule property by the plaintiff or his vendor was not through a registered sale deed separately. If really, the plaintiff or his vendor is the owner of the second schedule property, their names could have been reflected in the patta aforesaid. What was purchased under Ex.A1 by the plaintiff is only 1800 sq.ft. In the absence of parent deed of Ex.A1 and the oral evidence of the vendor namely that of Thiru Ettiyappan with regard to certain recitals in Ex.A1 relied on by the plaintiff, it is not possible to arrive at a just conclusion as to whether the second schedule property was purchased by the plaintiff along with the first schedule property and thereby whether the plaintiff has got title, right or interest whatsoever in the second schedule property. All other reliefs sought for by the plaintiff is consequential in nature in the light of the Advocate Commissioner's Report.*



WEB COPY

27. In these intrinsic circumstances of the case and in the interest of justice, I am of the considered view that the matter requires some more oral and documentary evidence with regard to the recitals made in Ex.A1 in connection with the second schedule property as to its title or ownership or enjoyment. Therefore, I am inclined to allow the appeal and set aside the decree and judgment of the trial court and remand the case to the trial court with a direction to allow the parties to let in additional oral and documentary evidence and dispose of the suit in accordance with law. The point for consideration is answered accordingly.

7. Perusal of the findings revealed that the matter requires some more oral and documentary evidence with regard to the recitals made in Ex.A1-sale deed in connection with the second schedule property as to its title or ownership or enjoyment. While arriving at such a conclusion,



C.M.A.Nos.2366 & 3321 of 2008

the first Appellate Court remanded the matter back to the trial Court for fresh trial. The reason for remand is ambiguous. There is no clear finding as to the purpose for remanding the matter back to the trial Court for re-trial. Such clarifications or doubts with reference to the issues can be decided by the first Appellate Court if necessary, by framing additional issues. Thus, instead of clarifying the doubts regarding the facts or directing the parties by recording additional evidence, which is vested with the first Appellate Court the matter was unnecessarily remanded for re-trial.

8. This being the factum, this Court is of the considered opinion that the first Appellate Court has committed an error in remanding the matter to the trial Court for fresh trial. Such act would cause greater prejudice to the interest of the parties to the litigation and therefore, the judgment and decree dated 03.01.2008 passed in A.S No.459 of 2004 is set aside. The appeal suit in A.S No.459 of 2004 shall stand restored



C.M.A.Nos.2366 & 3321 of 2008

back to file and the first Appellate Court shall decide the issues on merits and in accordance with law, if necessary by framing additional issues and by examining additional witnesses as expeditiously as possible, preferably within a period of **six** months from the date of receipt of a copy of this judgment.

9. The parties are restrained from seeking unnecessary adjournments. Even in case, adjournments are to be granted on genuine grounds and the Court should record the reasons. The adjournments on flimsy grounds are liable to be rejected in limini.

10. In the result, both the Civil Miscellaneous Appeals are allowed with the aforesaid directions. No costs.

12.06.2023

(2/2)

Index: Yes/No
Speaking order/Non-Speaking Order
uma

9/11



WEB COPY



C.M.A.Nos.2366 & 3321 of 2008

To

1. The V Additional Judge
City Civil Court, Chennai
2. The XVIII Assistant Judge
City Civil Court, Chennai.



WEB COPY



C.M.A.Nos.2366 & 3321 of 2008

A.A.NAKKIRAN, J.

uma

C.M.A.Nos.2366 & 3321 of 2008
(2/2)

12.06.2023