



SA.No.891 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.891 of 2006

M.P.Nos 1 and 2 of 2006

Krishnaveni

... Appellant

- Vs -

1. K.A.Kalyanasundaram

2.Smt. Shantakumari

3.Shanmugam

4.Smt.Rajalakshi

5.Sivakumar

6. Vasudevan

7.Selvaraj

8. Arumugam

... Respondents

(R2 to R8 brought on record as Legal heirs of the deceased sole Respondent vide order of Court dated 19.08.2014 made in M.P.No.1 of 2014 in S.A.No.891 of 2006)

Second Appeal is filed under Section 100 of the Civil Procedure Code aggrieved by the Judgment and decree dated 02.11.2005 made in A.S.No.66 of 2004 on the file of the Subordinate Judge, Arani, Thiruvannamalai District reversing the Judgment and Decree dated 25.10.2004 made in O.S.No.167 of 1996 on the file of the District Munsif, Polur.

For Appellant : Mr. M. Sriram

For Respondent-1 : Died (Steps taken)

For Respondent 2-8 : Mr. V. Veena



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JUDGMENT

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This second appeal is arising out of the suit for declaration and injunction, wherein the Trial Court has dismissed the suit. However, the First Appellate Court has allowed the appeal and thereby decreed the suit.

2. This Court heard the either side submissions.

3. According to the plaint averment, the issue is in respect of the “B” schedule property, which is a strip of land measuring east to west 2 feet and north to south 49 feet. The main contention put fourth by the learned counsel for the appellant is that the finding of fact recorded by the First Appellate Court is not supported with any reasoning and it contravenes the mandatory requirement under Order 41 Rule 31 of C.P.C. It is pertinent to mention here that the First Appellate Court is the final Court of facts. Therefore, the first appellate Court has to determine the points for consideration while deciding the appeal. Here in this case, the First Appellate Court has determined only the omnibus points for consideration qua whether the Judgment passed by the Trial Court is correct and whether the appellant is entitled for the relief as sought for.



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4. Even if there is omnibus points for determination, if on a harmonious reading of the Judgment of the First Appellate Court, if it satisfies the conditions of Order 41 Rule 31 of C.P.C by way of detailed discussion in respect of each issue, then the very framing of omnibus point for consideration will have no consequence and will not become fatal.

5. But in the case on hand, on mere reading of the First Appellate Court's Judgment, this Court could not find any discussion in respect of each issues which was adverted by the Trial Court. To put it in other way, the Judgment of the First Appellate Court simply refers both side arguments and thereafter without assigning any reason, eventually allowed the appeal. The reasoning is the endogenous vestige of any order. The absence of reasoning and absence of point for determination in the first appeal makes the Judgment of the Lower Appellate Court susceptible for remand.

6. In view of above reason, the Judgment and decree of the Lower Appellate Court in A.S.No.66 of 2004 is liable to to be set aside and this Court deem it fit to remit back the matter to the First Appellate Court for



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fresh consideration according to law. As the suit is of the year 1996, the First Appellate Court is directed to dispose the first appeal within a period of three months from the date of receipt of the copy of this order.

7. In the result, this second appeal is allowed by setting aside the Judgment and decree dated 02.11.2005 made in A.S.No.66 of 2004 on the file of the Subordinate Judge, Arani, Thiruvannamalai District, and the matter is remitted back to the first appellate Court for fresh disposal according to law as indicated herein above. No order as to costs. Consequently, the connected miscellaneous petitions are closed.

01.11.2023

smn

To

1. The Subordinate Judge, Arani,
2. The District Munsif, Polur.



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C.KUMARAPPAN, J

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