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C.M.A.No.3689 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

C.M.A.Nos.3689 & 3690 of 2013

1.C.Kalidas

2.C.Kanagaraj

3.C.Duraikannan

..Appellants in both the CMAs

..Vs..

Chinnaswamy (died)

1. Annalakshmi

2.C.Navaneedhan

3.C.Sumathi

...Respondents 1 to 3 in both the CMAs

4.T.M.Subramanian

5.Tamilselvi

6.The Tahsildar,

Coimbatore South, Coimbatore

7. The District Collector,

Coimbatore District, Coimbatore

.. Respondents 4 to 7 in
C.M.A.No.3689 of 2013

Common Prayer: Civil Miscellaneous Appeals filed under Order 43 Rule 1 (u) of CPC, to set aside the Judgment and Decree of the learned 1st Additional District Judge, Coimbatore, dated 27.02.2013 in A.S.Nos.89 of 2007 & 40 of 2008 reversing the Judgments and Decrees of the learned III



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Additional Subordinate Judge, Coimbatore, dated 03.01.2007 in O.S.Nos.1297 of 2002 and 603 of 2005 and remanding the suits to the trial court.

For Appellants : Mr. J.Hariharan for
in both the CMAs for M/s.V.Nicholas

For Respondents : Mr.R.Venkatajalapathy
in both the CMAs for Mr.S.Kadarkadai for R1 to R3
Mr.R.Bharathkumar for R4 & R5
Mr.C.Sathish for R6 & R7
Government Advocate

COMMON JUDGMENT

These appeals are filed against the judgments and decrees dated 27.02.2013 passed in A.S.Nos.89 of 2007 & 40 of 2008 reversing the Judgments and Decrees of the learned III Additional Subordinate Judge, Coimbatore, dated 03.01.2007 in O.S.Nos.1297 of 2002 and 603 of 2005 and remanding the suits to the trial court..

2. The learned counsel for the appellants has submitted that the appellants have filed a suit in OS.No.1297 of 2002 and one Late R. Chinnasamy filed a suit in OS.No.603 of 2005 before the III Additional



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Subordinate Judge, Coimbatore. The suits were tried jointly and a common judgment was passed by the trial court. Aggrieved over the same, R. Chinnasamy filed A.S.No.40 of 2008 and A.S.No.89 of 2007 before the Additional District Judge, Coimbatore. Pending these appeals, R.Chinnasamy died and his legal representatives were brought on record. He further submitted that in the said first appeals, the respondents herein filed I.A.No.613 of 2010 to receive the settlement deed. He further submitted that the appellate court either take such evidence or direct the trial court to take such evidence and to send them back after taking evidences so as to arrive at a conclusion by it. Instead of doing so, the learned Judge, set aside the judgments and decrees of the trial court and remanded the suits for fresh consideration.

3. To substantiate his contention, the learned counsel for the appellants has relied on the following decision:

Uttaradi Mutt Vs. Raghavendra Swamy Mutt - 2018 (10) SCC 484

in which paragraph No.16, reads as follows:

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"16. In other words, there are two options available to the appellate court. First, it may record the evidence itself by permitting the parties to produce evidence before it as per Rule 27 of Order 41 or direct the court from whose decree the appeal under consideration has arisen, to do so."

4. The learned counsel for the respondents has no objection in allowing these appeals.

5. Upon perusing the abovesaid judgment, this court is of the considered view that this judgment is squarely applicable to the present case.

6. For the reasons stated above, these Civil Miscellaneous Appeals are allowed and these cases are remitted back to the I Additional District Court, Coimbatore, for fresh disposal. The learned Judge is directed to dispose of the cases in A.S.Nos.89 of 2007 & 40 of 2008 after analysing



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the oral and documentary evidences and pass appropriate orders in accordance with law, within a period of six months from the date of receipt of a copy of this Judgment. No costs.

Index : Yes/No

18.04.2023

gv

(½)

Speaking Order/Non-Speaking Order

To

1. The 1st Additional District Judge, Coimbatore,
2. The III Additional Subordinate Judge, Coimbatore,

2.The Section Officer,
V.R Section,
High Court, Madras.



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A.A. NAKKIRAN.,J

gv

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