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C.R.P.No.2262 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.2262 of 2020

and

C.M.P.No.14173 of 2020

A.Ravi

... Petitioner

Vs.

V.Usha

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the judgment dated 07.07.2020 in A.S.No.2 of 2019 passed by the Sessions (Fast Track Mahila) Judge, Namakkal.

For Petitioner : Mr.D.Shivakumaran

For Respondent : Mr.T.Murugamanickam, Senior Counsel
for Ms.Zeenath Begum

ORDER

This Civil Revision Petition has been filed to set aside the judgment dated 07.07.2020 in A.S.No.2 of 2019 passed by the Sessions (Fast Track Mahila) Judge, Namakkal.



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2. Learned Counsel for the Revision Petitioner submits that the Revision Petitioner herein is the Defendant in O.S.No.138 of 2008 on the file of learned Sub Judge, Namakkal. It is his further contention that the Defendant in the suit had disputed the claim of the Plaintiff.

3. It is the case of the Defendant that he had approached the Plaintiff's husband for loan, who was working as Bank Manager. Subsequently, he changed his mind and he wanted back his records. Misusing the documents in his custody, the husband of the Plaintiff / the Bank Manager wanted the Defendant to part with his property, by executing a sale deed either in his favour or in favour of his relatives. As the Defendant refused to part with the property, therefore through the wife of the Bank Manager, the suit was instituted.

4. After receiving summons from the Court, the Petitioner herein as Defendant, entered appearance and filed written statement. Refuting and denying the averments in the plaint, he had clearly stated that the property belongs to tribal, which cannot be alienated. Plaintiff had sent a letter to the District Collector seeking cancellation of patta in favour of the Defendant.



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5. After full trial, the learned Sub Judge, Namakkal had decreed the suit. Aggrieved by the same, the Defendant had filed appeal in A.S.No.2 of 2019 before the learned Sessions (Fast Track Mahila) Judge, Namakkal. By judgment dated 07.07.2020, the learned Sessions (Fast Track Mahila) Judge, Namakkal had remanded the case to the trial Court, the relevant paragraph Nos.13 & 14, reads as follows:-

“13. As per the evidence of DW1 the suit property belonged to one Chinnapillai from whom Rajendran the vendor of the Defendant had purchased the suit property and had obtained the title through D-card. As the property given through D-card cannot be alienated to third person even as per the admission of DW1 himself it is evident that the suit property cannot be alienated by the Defendant in favour of the Plaintiff who is a non tribal, hence the Defendant is bound to return back the sale advance amount obtained from the Plaintiff is the stand taken by the Plaintiff. The Plaintiff has clearly stated in the plaint and in his evidence that he was not willing to purchase the property for the reason that the suit property cannot be alienated to a non-tribal persons and if sold to a non tribal person the property would be attached by the



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Government, so the said D-card is an important and crucial issue to be decided in the suit and the appeal. The trial Court has failed to record evidence with regard to the D-card and specifically decide as to whether the property is a D-card property as alleged by the Plaintiff. So this Court decides that additional evidence is to be recorded with regard to the D-card by the Trial Court and if necessary a finding is to be given in that regard and hence it becomes necessary to remand the case to the Trial Court for further recording of evidence with regard to whether the suit property is a property covered under the D-card.

14. In the result, with the above findings the suit in O.S.138/2008 is remanded to the Trial Court namely Subordinate Court, Namakkal. The Subordinate Judge, Namakkal is to record additional evidence with regard to the D-card and mark documents if any with regard to the D-card and give findings if necessary and thereafter send the same with the case bundle within a period of 2 months from the date of receipt of the order.”

6. Aggrieved by the same, the Defendant/Petitioner had filed the revision petition before this Court.



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7. It is the contention of the learned Counsel for the Revision Petitioner that once it is remanded, the appellate Court cannot call for the report. The learned Counsel for the Revision Petitioner invited the attention of this Court to Order XLI, Rules 23 to 26. Therefore, in the light of the said Order XLI, Rules 23 to 26, the order of the learned Sessions (Fast Track Mahila) Judge, Namakkal, remanding the matter is perverse, without setting aside the decree of the learned Sub Judge, Namakkal. Therefore, he seeks to set aside the order of remand.

7.1. The further contention of the learned Counsel for the Revision Petitioner that without setting aside the judgment and decree of the learned Sub Judge, Namakkal, the learned Sessions Judge ought not to have remanded the matter and once remanded, it cannot call for report from the learned trial Judge.

8. Learned Counsel for the Respondent / Plaintiff submitted that as per Order XLI, Rule 25, the appellate Judge himself can frame the issue which was left out by the learned trial Judge and adduce evidence and give a finding instead of remanding.



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9. Considering the rival submission made by the learned Counsel for the Petitioner and the learned Counsel for the Respondent, this Court is of the view that the judgment of the learned Additional District Judge, Fast Track Court, Namakkal in remanding the case back to the trial Court without setting aside the judgment and decree of the trial Court is found perverse and the same is set aside. The learned appellate Judge has all the powers of the trial Court to record evidence regarding the issue that was left out by the learned trial Judge.

10. The learned Sessions (Fast Track Mahila) Judge, Namakkal shall dispose of the Appeal Suit No.2 of 2019 by directing the parties to the Appeal to adduce evidence to the points raised by him, by which he had found that there was no evidence for the issue framed by the learned Sub Judge, Namakkal.

11. As per Order XLI, Rules 27 and 28 of CPC, the Appellate Court has all the powers of the trial Court regarding collecting evidence and passing Orders or Judgment accordingly. For the said purpose, the Appellate Court need not remand the case back to the trial Court. Therefore, the learned



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Sessions (Fast Track Mahila) Judge, Namakkal is directed to dispose of the Appeal after collecting evidence as per Order XLI, Rules 27 and 28 of CPC which is continuation of the trial Court proceedings and to dispose of the Suit.

12. With the above direction, **the Civil Revision Petition stands disposed off**. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

14.03.2023

Index: Yes/No

Neutral Citation: Yes/No

To

1.The Sessions (Fast Track Mahila) Judge, Namakkal

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



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SATHI KUMAR SUKUMARA KURUP, J.

AT

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