



CMA(MD).No.1167 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.1167 of 2013 and 1121 of 2011

and

C.M.(MD) No.1 of 2011 in C.M.A(MD) No.1121 of 2011

C.M.A(MD) No.1167 of 2013:

Balaji PrasadAppellant/Appellant/ 2nd Defendant

Vs.

1. Ramanathan ... 1st Respondent/1st Respondent/Plaintiff

2. Arulmigu Perumal Kovil Karanthai

Represented by its
Hereditary Trustee Ganapathi Pillai,
S/o. Mahaliapillai,
D.No.11/1560,
South Yadhava Street,
Kujiliyankulam Street
Karathattanakudi,
Thanjavur.

3. T.Vijayavalli

4. T.Navaneetham

5. T.Manokaran

6. T.Muguntharajan

7. T.Soundarajan

8. Lalitha

... Respondents 2 to 8/ Respondents 2 to 8/
Defendants 1 & 3 to 8



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PRAYER:- Civil Miscellaneous Appeal filed under Order 43, Rule 1 of C.P.C, against the judgment and decree dated 09.04.2011 made in A.S.No.22 of 2010 on the file of I Additional Sessions Judge, (Production of Civil Rights), Thanjavur, reversing the judgment and decree dated 31.03.2010 made in O.S.No.12 of 2005 on the file of Additional Sub Ordinate Court, Thanjavur and remanding the suit to the said Court.

For Appellant : Mr.A.Arumugam

For Respondents : Mr.M.R.S.Prabhu- For R1
: No appearance – For R4 to R8

C.M.A(MD) No.1121 of 2011:

S.Ramanathan Appellant/ 1st Respondent/Plaintiff

Vs.

1. Balaji Prasath ... 1st Respondent/Appellant/ 2nd Defendant

2. Arulmigu Perumal Kovil Karanthai
Represented by its
Hereditary Trustee Ganapathi Pillai,
S/o. Mahaliapillai,
D.No.11/1460,
South Yadhava Street,
Kurinjiliyankulam Street
Karathattanakudi,
Thanjavur.

3. T.Vijayavalli

4. T.Navaneetham

5. T.Manoharan



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6. T.Muguntharajan
7. T.Soundarajan
8. Lalitha

... Respondents 2 to 8/ Respondents/
Defendants 1 & 3 to 8

PRAYER:- Civil Miscellaneous Appeal filed under Order 43, Rule 1(U) of C.P.C, against the judgment and decree passed in A.S.No.22 of 2010 on the file of I Additional District and Sessions Judge (PCR) Thanjavur, dated 09.04.2011 reversing the decree and judgment passed in O.S.No.12 of 2005 on the file of the Additional Subordinate Court, Thanjavur, dated 31.03.2010.

For Appellant : Mr.V.K.Vijayaragavan
For Respondents : Mr.A.Arumugam- For R1
: No appearance – For R4 to R8

COMMON JUDGMENT

The second defendant is the appellant in C.M.A(MD) No.1167 of 2013. The Plaintiff is the appellant in C.M.A.(MD) No.1121 of 2011.

2. The plaintiff had filed O.S.No.12 of 2005, before the Additional Subordinate Court, Thanjavur, for the relief of declaration of title and consequential permanent injunction restraining the defendants from in any manner disturbing the peaceful possession and enjoyment of the property.



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3. The plaintiff was examined as PW.1 and the defendant was examined as DW.1 on his side. The plaintiff has marked as Ex.A1 to Ex.A.20. The defendants have marked as Ex.B1 to Ex.B3. An Advocate Commissioner was appointed and he has filed a report which was marked as Ex.C1 and the Plan as Ex.C2, and the Advocate Commissioner was examined as CW-1.

4. The trial Court, after considering the oral and documentary evidence and the Commissioner's Report, arrived at a finding that the plaintiff is the absolute owner of the property and granted a decree for declaration of title and permanent injunction. This judgment and decree was challenged by the second defendant by filing A.S. No.22 of 2010, on the file of the first Additional District and Sessions Court, Thanjavur. The learned first appellate Judge, after setting aside all the findings of the trial Court, on the ground that the plaintiff has neither established the title nor the possession over the property, proceeded to remand the matter back to the trial Court. The order of remand was passed to enable the trial Court to take effective steps to identify, to



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ascertain and fix suit property as on ground by giving an opportunity both the sides and apply the law by limitation in a proper prospective and decide on merits. This order of remand has been challenged by the second defendant in C.M.A.(MD) No.1167 of 2013 and by the plaintiff in C.M.A.(MD) No.1121 of 2011.

5. Pending both the Civil Miscellaneous Appeals, the appellant in C.M.A.(MD) No.1121 of 2011 and the first respondent in C.M.A(MD) No.1167 of 2013 had passed away. In C.M.A(MD) No. 1167 of 2013, steps have been taken to implead his legal heirs of the first respondent/plaintiff. Some of the legal heirs have been served and some of them have not been served. In C.M.A(MD) No.1121 of 2011, the appellant/plaintiff had passed away, the appellant has not taken steps to implead the legal heirs.

6. The learned counsel appearing for the appellant in C.M.A(MD) No.1121 of 2011 has filed a memo on 05.04.2023 to the effect that the legal heirs of the deceased plaintiff have not evinced any interest to implead themselves in the appeal and the bundle has been returned to the



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parties with change of vakalat and therefore, they have reported “no instructions”. In view of the above said memo, this Court is of the view that C.M.A(MD) No.1121 of 2011 has to be dismissed as abated.

7. However, the dismissal of the said appeal cannot prevent the second defendant in the suit from challenging the order of remand. Therefore, this Court proceeds to consider the C.M.A(MD) No. 1167 of 2013 on merits.

8. The first Appellate Court, in paragraph Nos.18 to 24 has completely disagreed with the findings of the trial Court and has also set aside the findings. However, in paragraph No.25, the first Appellate Court has suddenly jumped into a conclusion that in the interest of justice the entire matter is remitted back to the trial Court to identify the suit schedule property and to give an opportunity to both the sides. When the first appellate Court finds that the entire evidence is already on record, the Court should not have offered a second chance to plaintiff to improve his case. An order of remand cannot be passed by the first appellate Court for granting second opportunity to the plaintiff or the defendants



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so as to improve their case when they have not done so in the trial Court, despite so many opportunity, being given.

9. Therefore, this Court is of the view that the first Appellate Court ought to have decided the appeal on merits and in accordance with law with the available oral and documentary evidence on record. Further, as far as the application of Law Limitation is concerned, the first appellate Court has to apply its own mind and decide. The first appellate Court cannot remand the matter for the purpose of deciding a legal dispute. Therefore, this Court is of the view that the order of remand is not legally sustainable on the above said ground.

10. In view of the above said facts, C.M.A(MD) No.1167 of 2013 is allowed and the matter is remitted back to the file of the first appellate Court for deciding the appeal on merits and in accordance with law on the basis of the oral and documentary evidence already on record.



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11. In the result, C.M.A(MD) No.1121 of 2011 stands dismissed as abated. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

13.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

- 1.The I Additional District and Sessions Judge,
(Production of Civil Rights),
Thanjavur.
2. The Additional Sub Ordinate Court,
Thanjavur.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgement made in
C.M.A(MD)Nos.1167 of 2013 and 1121 of 2011

13.04.2023