



C.M.A.(MD).No.1481 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1481 of 2013

and

M.P.(MD) No.1 of 2013

1. Kavitha
2. Ramaraj Udayar Appellants/ Respondents 1 and 2
/ Defendants 1 and 2

-vs-

1. Nambirajan ... 1st Respondent/Appellant/ Plaintiff
2. Rengaraj 2nd Respondent/ 3rd Respondent/
3rd Defendant

(The 2nd respondent is given up, since
he is ex-parte in the Courts-below)

PRAYER: Civil Miscellaneous Appeal filed under Order 41 Rule 1 of C.P.C, to set aside the judgment and decree dated 28.03.2013 passed in A.S.No.77 of 2012 on the file of the learned Subordinate Judge, Pudukkottai, setting aside the judgment and decree, dated 30.10.2010 passed in O.S.No.234 of 2007, on the file of the learned District Munsif, Pudukkottai, remanding the suit to trial Court.

For Appellants : Mr.K.Balasundaran
Senior Counsel



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For Respondents : Mr. N.Tamil Mani
for R-1

: R2 – given up vide EB

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the defendants 1 and 2 in a suit for declaration of title and permanent injunction challenging the order of remand passed by the first appellate Court.

2. The plaintiff had filed O.S.No.234 of 2007 for the relief of declaration of title and permanent injunction with regard to two items of property. The Trial Court, after considering the oral and documentary evidence, had dismissed the suit on the ground that the plaintiff has not established his case.

3. The plaintiff had filed A.S.No.77 of 2012 before the Sub Court, Pudukkottai District, challenging the said judgment and decree. The first appellate Court, without setting aside anyone of the findings of the trial Court, had simply passed an order of remand with a finding that both the



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parties have not made any attempt to establish their case properly before the trial Court.

4. It is the settled position of law that whenever the first appellate Court passes an order of remand, all the findings of the trial Court should be set aside and thereafter, the first appellate Court should arrive at a finding that the oral and documentary evidence that is available before the first appellate Court is not sufficient to arrive at any conclusion. However, such a conclusion has not been arrived at by the first appellate Court. Without setting aside anyone of the findings of the trial Court and without arriving at any findings relating to the sufficiency of the oral and documentary evidence, the first appellate Court has simply passed an order of remand. Therefore, order of remand is not in accordance with under Order 41 Rule 23 C.P.C. The order of remand is liable to be set aside.

5. The learned counsel appearing on either side submit that in the order of remand, the trial Court has appointed an Advocate Commissioner and he has also submitted a report.



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6. In view of the above said facts, the order of remand is invalid in the eye of law and any oral and documentary evidence or Commissioner's report that were undertaken before the trial Court will not have any validity. The matter is remitted back to the first appellate Court to consider the matter afresh on merits and in accordance with law, based on the oral and documentary evidence which are already on record.

7. With the above said observations, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

29.03.2023

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

1. The Subordinate Court,
Pudukkottai.
2. The District Munsif Court,
Pudukkottai
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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