



*C.M.A(MD)No.958 of 2010*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.06.2023**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.958 of 2010**

**and**

**M.P(MD)No.1 of 2010**

Banu

... Appellant/Respondent/Plaintiff

Vs.

1.Prasannakumari

2.Kumar

3.Surendran

... Respondents/Appellants/Defendants

**PRAYER:** Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.55 of 2009 on the file of the I Additional Subordinate Judge, Nagercoil (Camp at Padmanabapuram), dated 02.03.2010 setting aside the judgment and decree in O.S.No.116 of 2000 passed by the Additional District Munsif, Eraniel, dated 10.08.2009 by remanding the same.

For Appellant : Mr.S.Rajasekar

For Respondents : Mr.I.Robert Chandrakumar



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## **JUDGMENT**

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The plaintiff in a suit for declaration of title and permanent injunction is the appellant challenging an order of remand passed by the first appellate Court.

2. The appellant herein as plaintiff had filed O.S.No.116 of 2000 on the file of I Additional District Munsif Court, Eraniel for the relief of declaration of title and permanent injunction. The suit was dismissed on 30.09.2005. Challenging the same, the plaintiff had filed A.S.No.49 of 2006 before Sub Court, Padmanabhapuram. The learned Subordinate Judge after hearing either parties, had allowed the appeal and remitted the matter to the trial Court with a direction to both the parties to let in oral and documentary evidence to establish the genuineness or otherwise of Exhibits A.1, B.1 and B.2. It could be seen from the records that after remand, either party has not let in any fresh oral or documentary evidence. The trial Court had decreed the suit on 10.08.2009. Challenging the same, the defendants had filed A.S.No.55 of 2009 on the file of First Additional Sub Court, Nagercoil (Camp at Padmanabhapuram).



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3. The first appellate Court after relying upon the order of remand passed in A.S.No.49 of 2006, has arrived at a specific finding that both the parties have not let in any fresh oral or documentary evidence after remand before the trial Court and the trial Court had decreed the suit based upon the oral and documentary evidence that were available on record prior to the order of remand. The first appellate Court had further found that it is very much essential to establish whether the signature found in Exhibits A.1 and B.1 is that of the signature of Krishnakuptha who is the admitted owner of the property. The first appellate Court further found that the appellants / defendants had filed I.A.No.161 of 2009 to compare the signature of Krishnakuptha in Exhibits A.1 and B.1 by referring both the documents to a hand writing expert. The first appellate Court further found that for referring both the documents to a hand writing expert, the matter has to be remitted back again to the trial Court. The first appellate Court further blamed the trial Court for not referring the document to an expert and allowed the appeal and remitted the matter back to the trial Court. This order of remand is under challenge in the present appeal by the plaintiff.



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4. According to the learned counsel appearing for the plaintiff / appellant, the first appellate Court ought not to have remitted the matter back to the trial Court when the trial Court after re-appreciating the oral and documentary evidence, has decreed the suit. When the defendant has not filed any application before the trial Court to compare the signature in Exhibits A.1 and B.1, the said exercise before the first appellate Court has been done only to drag on the proceedings. Hence, he prayed for setting aside the order of remand.

5. Per contra, the learned counsel appearing for the respondents / defendants had contended that the plaintiff had filed the suit for declaration of title and permanent injunction and therefore, the entire burden is upon the plaintiff to establish his title and possession over the suit schedule properties. It is for the plaintiff to let in oral and documentary evidence to prove Exhibits A.1 and disprove Exhibit B.1 in order to claim title to the property. However, the first appellate Court has erroneously shifted the burden upon the defendants to disprove the case of the plaintiff. He further contended that when the order of remand was passed in A.S.No.49 of 2006, the plaintiff has not utilized the said order of remand and has not let in any evidence before the trial Court.



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Therefore, second chance cannot be given to the plaintiff to prove his case. Hence, he contended that for obtaining an expert opinion and for examination of the expert, the order of remand is essential and she prayed for sustaining the order of remand passed by the first appellate Court.

6. I have carefully considered the submissions made on either side.

7. Both the parties admit that the suit schedule property belongs to one Krishnaguptha. The plaintiff who is the daughter of the said Krishnaguptha claims title on the basis of a settlement deed said to have been executed by her father under Exhibit A.1, dated 28.12.1999. On the other hand, the defendants had contended that Krishnaguptha has executed a registered sale deed under Exhibit B.1 on 17.12.1976 in favour of one Gobinathan Nair and Nalina Kumari. Thereafter, the said Krishnaguptha did not have any title whatsoever to execute Exhibit A.1 settlement deed in favour of the plaintiff. The defendants have further contended that the wife and other siblings of the said Krishnaguptha have executed a confirmation deed under Exhibit B.2 in the year 1993 in favour of the purchasers under Exhibit B.1 thereby confirming the sale



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deed under Exhibit B.1 said to have been executed by Krishnaguptha.

The defendants have further contended that they have purchased the properties from Gobinathan Nair and Nalina Kumari under Exhibit B.4 on 05.11.1988. In view of the above said facts, there is a clear dispute between the parties whether Exhibit B.1 will prevail over Exhibit A.1 or not.

8. When the plaintiff has filed the suit for declaration of title and permanent injunction, the entire burden is upon her to establish her title by proving Exhibit A.1. It is the specific case of the plaintiff that her father's signature in Exhibit B.1 has been forged by the said purchasers. Therefore, it is for the plaintiff to prove that the signature in Exhibit B.1 is a forged document.

9. In view of the above said facts, it is clear that the attempt made on the side of the defendants by filing I.A.No.161 of 2009 to compare the signature in Exhibits A.1 and B.1 is nothing but taking the burden off the plaintiff.



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10. The first appellate Court has remitted the matter for the second time to the trial Court only on the ground that the defendants had filed an application to send the disputed document for expert opinion. However, the first appellate Court has not considered the said I.A.No.161 of 2009 on merits and it has not arrived at any finding whether such an application is necessary and that too at the appellate stage or not. Without passing any order in I.A.No.161 of 2009, the first appellate Court had erroneously remitted the matter back to the trial Court. Therefore, the appeal is allowed and the order of remand is set aside.

11. In view of the above said deliberations, this Court is inclined to pass the following orders:

(i) The order of remand is set aside and the matter is remitted back to the file of the first appellate Court.

(ii) The first appellate Court shall consider I.A.No. 161 of 2009 on merits and in accordance with law and in case, if it arrives at a finding that such an exercise has to be carried out, the same may be allowed.

(iii) Both the parties are at liberty to examine or



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cross-examine the said expert in relation to the report that is to be filed by the said expert.

(iv) Based upon the expert report, the first appellate Court can pass orders on merits and in accordance with law in the main appeal after giving due opportunity to both the parties. The appeal shall be disposed of as expeditiously as possible.

12. With the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

**07.06.2023**

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

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To

- 1.The I Additional Subordinate Judge,  
Nagercoil (Camp at Padmanabapuram).
- 2.The Additional District Munsif,  
Eraniel
- 3.The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.

**R.VIJAYAKUMAR,J.**



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Judgment made in  
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