



C.M.A.(MD)No.126 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.126 of 2021

and

C.M.P.(MD)No.1075 of 2021

1.S.Ramesh Pandiyan

...Appellant/1st Respondent/1st Defendant

Vs.

1.J.Muthu Lakshmi

...1st Respondent/Appellant/Plaintiff

2.R.Kamatchi Ammal

...2nd Respondent/2nd Respondent/2nd Defendant

3.B.Pandi Selvi

..3rd Respondent/3rd Respondent/3rd Defendant

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (u) r/w Section 104 of the Civil Procedure Code, to set aside the judgment and decree passed by the learned Subordinate Court, Periyakulam dated 09.01.2020 in A.S.No.10 of 2015 setting aside the judgment and decree passed by the learned District Munsif Court, Periyakulam dated 12.08.2015 in O.S.No.237 of 2012.

For Appellant : Mr.P.Prabu

For Respondents : No Appearance



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JUDGMENT

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This Civil Miscellaneous Appeal is filed challenging the decree and judgment, by which the First Appellate Court set aside the judgment of the trial Court and remanded the same to the trial Court for fresh disposal.

2.For the sake of convenience, the parties herein are referred to as per their rank before the Tribunal.

3.The brief facts, leading to the filing of the civil miscellaneous appeal, are as follows:-

(i)The suit had been originally filed seeking the relief of declaration of the Will dated 13.08.1989 as null and void and claiming partition in the suit properties. The plaintiff and the defendants are siblings. The suit property originally belonged to the grandfather of the plaintiff. The plaintiff's grandfather had executed a Will dated 11.07.1955 bequeathing all the properties in favour of the plaintiff's mother. After her demise, the plaintiff and the defendants were in joint possession of the suit property. All of a sudden, the first defendant stated that the mother of the plaintiff had executed a Will dated 13.08.1999 in favour of his minor son appointing him as guardian. Hence, the suit was filed.



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(ii)The first defendant filed a written statement stating that the mother of the plaintiff and the defendants during her lifetime had executed the Will dated 13.08.1999 in favour of the minor son of the first defendant. All the family members of the first defendant had known about the said Will. Further, the plaintiff had not impleaded the necessary parties to the suit. Hence, he opposed the suit.

(iii)The trial Court on appreciation of evidence had framed the following issues:

1.Whether the plaintiff is entitled to get the relief of declaration declaring the Will dated 13.08.1999 as null and void and not binding upon the plaintiff?

2.Whether the plaintiff is entitled for partition as prayed for?

3.Whether the plaintiff is entitled to get accounts regarding the income from the suit properties?

4.Whether the suit is bad for non joinder of necessary parties?

5.Whether the suit is barred by limitation?

6.To what other reliefs, if any, the plaintiff is entitled to?



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(iv) Though the aforesaid issues were framed, the trial Court had dismissed the suit mainly on the ground that the beneficiary of the Will had not been added as one of the parties to the suit. Challenging the same, an appeal was filed by the plaintiff. The appellate Court, finding that the defendants were permitted to file an amended written statement by an order of this Court dated 01.09.2019 in C.R.P.(MD)No.1063 of 2018 by raising a plea of partial partition and the trial Court without deciding all the issues had non-suited the plaintiff only on the ground of non joinder of necessary party, had remanded the suit to the trial Court for fresh consideration. Challenging the same, the present appeal is filed.

4. The learned counsel for the appellant/first defendant would submit that the Appellate Court committed an error in remanding the matter to the trial Court. The procedure adopted by the Appellate Court is not in accordance with law and the same is required to be set aside.

5. In view of the above, now the point arise for consideration in this appeal is:

1. Whether the order of remand passed by the appellate Court is proper?



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6.Perusal of the entire judgment reveals that the First Appellate Court, having found that the trial Court had non-suited the plaintiff only on the ground of non joinder of necessary party and the other issues raised in the suit as well as in the written statement had not been decided, remanded the matter for fresh consideration to the trial Court. The suit itself was decided and dismissed on one issue as preliminary issue and other issues are not answered. The proper way to adjudicate all the issues framed by the trial Court on the basis of the additional written statement and pleadings of the parties that have been received on record as per the direction of this Court, is only the fresh trial.

7.When the trial Court decided the suit on a preliminary issue, which had been appealed and the appellate Court set aside the said judgment, in that situation, the appellate Court can very well remand the matter under Order 41 Rule 23 of CPC. Such view of the matter, this Court does not find any infirmity in the judgment of the appellate Court in remanding the matter for fresh consideration.

8.Accordingly, the Civil Miscellaneous Appeal is dismissed and the



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judgment rendered by the Appellate Court is confirmed. The trial Court is directed to expedite the trial process and complete the same within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

28.04.2023

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

- 1.The Sub Court, Periyakulam.
- 2.The District Munsif Court, Periyakulam.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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