



C.M.A.(MD)No.474 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.474 of 2021

and

C.M.P.(MD)No.4127 of 2021

1.R.Jeyabalan

2.R.Rajendran

...Appellants/Respondents/Plaintiffs

Vs.

V.Ravichandran

...Respondent/Appellant/4th Defendant

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of the Civil Procedure Code, to set aside the decree and judgment passed in A.S.No. 10 of 2019 on the file of the Additional Sub Court, Kumbakonam dated 02.02.2021 remanded back the decree and judgment passed in O.S.No.157 of 2010 on the file of the I Additional District Munsif Court, Kumbakonam dated 04.01.2019.

For Appellants : Mr.M.R.S.Prabhu

For Respondent : Mr.V.Sasi Kumar

JUDGMENT

The present Civil Miscellaneous Appeal is filed challenging the order of



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the First Appellate Court setting aside the judgment made by the trial Court.

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

3.The brief facts leading to the filing of this Civil Miscellaneous Appeal are as follows:

Originally the suit property is owned by one Kondaiya Naidu @ Ramasamy Naidu. He had two sons namely, Srinivasa Naidu and Rajagopal Naidu. Srinivasa Naidu had a son namely Varatharajan. He died issueless on 12.03.2010. Whereas, Rajagopal Naidu had two sons namely Jeyabalan and Rajendran, who are the appellants herein. The first defendant was working under Varatharajan. She claimed that the first respondent during his life time had executed an unregistered sale deed in his favour and tried to interfere with the suit property on the strength of that unregistered agreement. Hence, the suit was by the plaintiffs.

(ii)The first defendant filed a written statement contending that the first defendant had purchased the suit property from the said Varadharajan during his life time for a valid consideration through a registered sale deed. The first



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defendant was also put in possession and enjoyment of the suit property on the strength of the said sale deed. The tax receipts and Electricity receipts were in the name of the first respondent. Hence, she opposed the suit.

(iii)The Trial Court on appreciation of the evidence on record had granted decree in favour of the plaintiffs. Challenging the same, the 4th defendant has filed an appeal. During the appeal stage, the respondent herein/ fourth defendant had filed an application under Order 41 Rule 27 of the Civil Procedure Code (hereinafter referred to as 'CPC' for the sake of brevity) to receive certain documents as additional documents to prove that the vacant site is belonging to the temple, therefore, the plaintiffs are not entitled to any right over the said property. The appellate Court having allowed the said application, set aside the entire judgment and decree of the trial Court and remanded the matter to the trial Court for fresh trial for impleading the temple as a party to the suit. Challenging the same, the present appeal came to be filed.

4.The learned counsel for the appellants/plaintiffs would submit that the Appellate Court committed an error in remanding the matter to the trial Court. Once an application under Order 41 Rule 27 of CPC is allowed, the appellate



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Court may take such evidence, or direct the Court, from whose decree the appeal is preferred, to take such evidence and send the evidence to the appellate Court.

Whereas, the Appellate Court, without resorting to the procedure contemplated under Order 41 Rule 28 of CPC, had set aside the entire decree and judgment and simply remanded the suit for fresh trial. 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 facts, now the point arise for consideration in this appeal is:

(1) Whether the Appellate Court is right in remanding the matter by setting aside the entire judgment of the trial Court merely on the ground that additional documents have been received?

6.At the outset, it is to be noted that the respondent had claimed title on the basis of certain documents said to have been executed by one of the co-owners, who died issueless. Though the respondent claimed title on the basis of an unregistered sale deed, now Will had been projected based on that document. Having failed to establish the above documents before the trial Court, an



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application under Order 41 Rule 27 of CPC had been filed to show that the suit property belongs to the temple. The Appellate Court having allowed the said application set aside the entire judgment and decree of the trial Court and remanded the matter to the trial Court for fresh trial. It is not valid in the eye of law. The Appellate Court can remand the matter only on certain circumstances as provided under Order 41 Rule 23 to Rule 25 of CPC.

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.

8. Order 41 Rule 23-A of CPC reads that only when the appellate Court is of the considered view that re-trial is absolutely necessary and the decree and judgment of the trial Court is set aside, the remand is possible. Order 41 Rule 24 of CPC deals with disposal of the appeal by the appellate Court itself, when there are sufficient evidence on record. Order 41 Rule 25 of CPC deals with non framing of necessary issues and in such case, the appellate Court may remand the suit and refer the same for re-trial to the Court, whose decree is appealed with a



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direction to take additional evidence if necessary.

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9.Only in the above circumstances, the matter can be remanded to the trial Court. Whereas, in the present case, the Appellate Court had simply remanded the entire matter, merely on the ground that the Appellate Court had allowed the application filed under Order 41 Rule 27 of CPC, for reception of additional documents.

10.In the considered view of this Court, the very approach of the Appellate Court in setting aside the entire judgment of the trial Court merely on the basis of reception of additional documents, which had not been even tested or proved before the trial Court, is not proper. If the Appellate Court is intended to allow the application filed under Order 41 Rule 27 of CPC, the Court ought to have resorted to the procedure under Order 41 Rule 28 of CPC, to record additional evidence either by itself or should have directed the trial Court or any other subordinate Court to record such evidence and forward the same to the Appellate Court. Thereafter, the Appellate Court should have decided the appeal on merits. However, the appellate Court without embarking such exercise had simply remanded the matter to the trial Court and set aside the entire judgment, which is *per se* not valid in the eye of law.



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11. In such view of the matter, the judgment passed by the appellate Court in remanding the matter to the trial Court for re-trial is interfered and the same is set aside. The appellate Court is directed to record additional evidence on the documents, which had been received under Order 41 Rule 27 of CPC and give proper opportunity to both sides to adduce any oral or rebuttal evidence and then decide the appeal on its own merits. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

12. With the above direction, this Civil Miscellaneous Appeal is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

09.06.2023

NCC : Yes/No

Index : Yes/No

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To

1. The Additional Sub Court, Kumbakonam

2. The I Additional District Munsif Court, Kumbakonam

3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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