



C.M.A.(MD).No.477 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.477 of 2019

1. A.Vincent Albert

2. M.David

S/o. Mariyadoss,
No.26, 17th Street,
Anna Nagar, Vilar Road,
Thanjavur Town,
Represented by his Power Agent,
A.Vincent Albert,
S/o. Abraham,
No.23, Chithra Nagar,
Nanjikkottai Road,
Thanjavur Town and Munsif.

... Appellants/
Respondents 1 and 2 /
Plaintiffs 1 and 2

-VS-

1. Anand @ Arumugam

S/o. Ramu,
191C, Thillai Nagar,
Vilar Road,
Thanjavur Town,
Represented by his Power Agent,
K.Anbazzhagan.

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

2. Vikraman

3. Mahesh

... Respondents 2 and 3/
Respondents 3 and 4/



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Defendants 1 and 3

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1(U) of C.P.C., against the fair and decretal order dated 14.03.2019 passed in A.S.No. 8 of 2018 on the file of the Additional Subordinate Judge, Thanjavur, remanding the suit in O.S.No.522 of 2008 dated 31.01.2018, on the file of the District Munsif Court, Thanjavur.

For Appellants : Mr.R.J.Karhick

For Respondents : Mr.P.Vadivel – for R1
No appearance – for R2 and R3

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the plaintiffs in O.S.No.522 of 2008 on the file of the District Munsif Court, Thanjavur challenging the order of remand passed by the first appellate Court.

2. According to the plaintiffs as the appellants herein, they had filed a suit for declaration that the second plaintiff is the absolute owner of the second item of the suit property and for recovery of possession of the said property from the second defendant. The plaintiffs have further prayed for the relief of permanent prohibitory injunction with regard to the first item of the suit property. According to the plaintiffs, the suit properties were originally



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owned by Govindasamy Naidu, who had sold the said property to one Sheik Davood. The said Sheik Davood is said to have executed a power deed in favour of one M.A.Jamal Moideen Pappa, under Ex.A2, dated 24.09.1973. Upto this stage, there is no dispute between the parties.

3. According to the plaintiffs, the said power agent had executed a sale deed in favour of the first plaintiff under Ex.A3 on 23.02.2004 and thereby, he claims title. The first plaintiff is said to have sold the property to the second plaintiff under Ex.A4. Thus, the plaintiffs claimed title and possession over the suit schedule properties.

4. On the other hand, the defendants had contended that the power agent Sheik Davood, namely, M.A.Jamal Moideen Pappa had executed a registered sale deed in favour of Lathif on 02.03.1974 under an unmarked document and therefore, the sale deed executed in favour of the first plaintiff under Ex.A3 is not valid in the eye of law.

5. The trial Court, after considering the oral and documentary evidence, had decreed the suit as prayed for. The defendants had filed A.S.No.8 of 2018



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before the Additional Sub Court, Thanjavur. Pending appeal, the defendants had filed I.A.Nos.13 and 14 of 2018 for marking certain additional documents in order to establish the fact that the Principal viz., Shiek Davood had passed away, when the agent M.A.Jamal Mohideen Pappa is said to have executed Ex.A.3. The first appellate Court has allowed both the Interlocutory Applications. However, the said documents are not shown in the list of documents before the first appellate Court. After receiving the additional documents, the first appellate Court had remitted the matter back to the trial Court in order to let in oral and documentary evidence by both the parties to establish the fact whether Sheik Dawood was alive or dead on the date when Ex.A3 was executed. This order of remand is under challenge in the present appeal.

6. According to the learned counsel appearing for the appellants/ plaintiffs, there are no pleadings whatsoever in the written statement that Sheik Davood was not alive when his power agent has executed Ex.A3 in favour of the first plaintiff. Therefore, the first appellate Court was not right in remitting the matter for establishing the said fact. He further contended that the applications in I.A.Nos.13 and 14 of 2018 have been allowed by the first



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appellate Court without following Order 41 Rule 27 and Rule 28 C.P.C.

Without examining any one of the persons connected to those additional documents, the documents have been received and they have been marked which is contrary in the judgment of the Hon'ble Supreme Court. Hence, he prayed for setting aside the order of remand.

7. Per contra, the learned counsel appearing for the first respondent had contended that during the evidence before the trial Court, it was established that Sheik Davood was not alive at the time of execution of Ex.A3. Only in order to prove the said fact, additional documents were presented before the first appellate Court. Though Ex.B1 was marked on the side of the defendants to establish the date of death of said Sheik Davood, due to some discrepancy in the name, the trial Court has not accepted the same. Therefore, the plaintiffs as the appellants have filed these additional documents in order to establish the date of death of Sheik Davood. Once the additional documents were marked, further oral evidence is required and only for the said purpose, the order of remand has been passed and therefore, the same may not be disturbed.



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8. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

9. The first appellate Court has chosen to allow I.A.Nos.13 and 14 of 2018, which were filed by the 2nd defendant/1st respondent under Order 41 Rule 27 C.P.C on the basis of affidavit and counter affidavits. It is the settled position of law that no additional evidence can be let in without examining the person connected with the said documents. Therefore, the order of the first appellate Court in allowing these two applications, is clearly in violation of the judgment of the Hon'ble Supreme Court. Only after allowing the said additional evidence, the first appellate Court had remitted the matter back to the trial Court in order to let in evidence for the purpose of establishing that whether Shiek Davood was alive on the date of Ex.A3 or not? when the first appellate Court feels that additional evidence is required for the adjudication of the appeal, it can very well receive the same and decide the appeal on merits and in accordance with law. However, the additional evidence has to be received only by strictly following the Order 41 Rule 27 and Rule 28



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C.P.C. Just for the purpose of receipt of additional evidence, the appeal cannot be allowed and the matter be remitted back to the trial Court.

10. In view of the above said deliberations, this Court passes the following order:

(i) The order of remand passed by the first appellate Court is set aside and the matter is remitted back to the file of the first appellate Court to decide the appeal on merits and in accordance with law;

(ii) The order passed in I.A.Nos.13 and 14 of 2018 is also hereby set aside;

(iii) If the appellants/plaintiffs are so advised, they are entitled to let in oral and documentary evidence to examine the person connected with the additional documents in order to mark the same. In case, if any oral or documentary evidence is required by the first appellate Court on behalf of the defendants, the respondents/defendants shall be given a chance to cross examine the witnesses or to let in



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additional evidence on either side; and

(iv) The appeal shall be disposed of on or before
31.12.2023 by the first appellate Court after giving due
opportunity to both the parties.

11. Accordingly, this Civil Miscellaneous Appeal stands allowed. There
shall be no order as to costs.

23.06.2023

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

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



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R.VIJAYAKUMAR,J.

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