



C.M.A. (MD)No.768 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 14.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.768 of 2021

and

C.M.P.(MD) No.7622 of 2021

- 1.Kumarasamy
- 2.Subramaniyan
- 3.Thyagarajan (Died)
4. Arumuga Thevar
- 5.Neethivel Raja
- 6.Sharmila
- 7.Sathya
- 8.Vasantharaja

... Appellants

(Appellants 5 to 8 are brought on record as LR's of the deceased 3rd appellant vide Court order dated 28.04.2023 made in C.M.P.(MD)Nos.4735 and 4738 of 2023 in C.M.A.(MD)No.768 of 2021)

Vs.

- 1.Mallika
- 2.Vigneswaran
- 3.Ramachandran

... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(4) of C.P.C., against the judgment and decree of Sub-Court, Aranthangi, dated 08.10.2020 rendered in A.S.No.31 of 2019 remitting back O.S.No.101 of 2008 to the file of District Munsif Court, Aranthangi.



C.M.A. (MD)No.768 of 2021

For Appellants : Mr.N.Balakrishnan
For Respondents : Mr.K.Baala Sundharam,
Senior Counsel for
Mr.R.Paranjothi

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the judgment and decree dated 08.10.2020 made in A.S.No.31 of 2019, passed by the learned Subordinate Judge, Aranthangi, remitting back O.S.No.101 of 2008 to the file of District Munsif Court, Aranthangi.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking before the trial Court in O.S.No.101 of 2008.

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

The plaintiffs have filed a suit in O.S.No.101 of 2008 on the file the District Munsif Court, Aranthangi for declaration and permanent injunction. The plaintiffs have traced the title through one Subbiah Thevar, Sundara Thevar and Chidambara Thever, which was disputed by the defendants.



C.M.A. (MD)No.768 of 2021

4. The trial Court has framed the following issues:

1. *Whether the plaintiffs are entitled to declaration and injunction as prayed for?*
2. *To what other relief?*

5. Before the trial Court, on the side of the plaintiffs, one witness was examined as P.W.1 and 14 documents were marked as Ex.A1 to Ex.A14. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and 15 documents were marked as Ex.D1 to Ex.D15.

6. Considering the entire evidence and materials on record, the trial Court dismissed the suit holding that the plaintiffs have not established the title. Challenging the same, appeal was filed by plaintiffs before the Sub Court, Aranthangi. During the pendency of the appeal, an application under Order 41 Rule 27 of C.P.C. has been filed by the plaintiffs. The first appellate Court, taking note of the above application, had set aside the entire decree and judgment of the trial Court and remanded the matter back to the trial Court. Challenging the same, the present Civil Miscellaneous Appeal has been filed by the defendants.



C.M.A. (MD)No.768 of 2021

7. It is the contention of the learned counsel appearing for the defendants / appellants that the first appellate Court, without following the proper procedure, had simply set aside the detailed judgment of the trial Court after allowing the application filed under Order 41 Rule 27 of C.P.C., which is not proper. Hence, the same has to be set aside.

8. Heard the learned Senior Counsel appearing for the plaintiffs / respondents and perused the materials available on record.

9. In the light of the above submissions, now the point arise for consideration in this Civil Miscellaneous Appeal are as follows:

1. Whether the appellate Court is right in setting aside the judgment of the trial Court and remanding the matter without following any procedure as contemplated under C.P.C.?

2. Whether the appellate Court is right in remanding the matter without re-framing the issue itself, when an evidence was already available in respect of the particular issue?



C.M.A. (MD)No.768 of 2021

10. On a perusal of the entire judgment of the trial Court and first appellate Court, this Court is of the view that the first appellate Court evaded its responsibility in deciding the matter as per the procedure established under the law. Suit has been laid for declaration and permanent injunction. The plaintiffs have traced the title through one Subbiah Thevar, Sundara Thevar and Chidambara Thever. Though two issues were framed before the trial Court, the parties understood the pleadings and adduced sufficient evidence with regard to the relationship and the genealogy aspect and the trial Court dismissed the suit on the ground that the plaintiffs have not established the case. However, the first appellate Court after allowing the application filed under Order 41 Rule 27 of C.P.C., without embarking any further enquiry either to record the evidence itself or to direct the trial Court to record the further evidence, simply remanded the matter to the trial Court and set aside the entire judgment. The appellate Court while remanding the matter has observed that since the trial Court has not framed the specific issue with regard to the genealogy, retrial is required.

11. On perusal of the entire judgment of the trial Court it is seen that, in fact the parties understood their lis and adduced sufficient evidence in all aspects. Therefore, when the evidence are already on record, it is sufficient to dispose of the main case on merits, the Appellate Court ought to have resettled the issues if at



C.M.A. (MD)No.768 of 2021

all those issues are not answered and would have proceeded further. However, the same has not been done in this case, which is against the very procedure contemplated under Order 41 Rule 24 of C.P.C.

12. Such view of the matter, the very approach of the first appellate Court is liable to be interfered. Accordingly, the remand order passed by the first appellate Court is set aside. The first appellate Court is directed to record further evidence itself and resettle the issues, if necessary, based on the evidence already on record and decide the appeal on its own merits, within a period of three months from the date of receipt of a copy of this judgment. The parties are directed to appear before the appellate Court on 10.07.2023.

13. With the above observations, this Civil Miscellaneous Appeal is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

14.06.2023

NCC : Yes/No
Index : Yes/No

vsm



C.M.A. (MD)No.768 of 2021

WEB COPY

To

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



WEB COPY



C.M.A. (MD)No.768 of 2021

N.SATHISH KUMAR, J.

vsm

C.M.A.(MD)No.768 of 2021

14.06.2023