



S.A.(MD).No.400 of 2020

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.12.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.400 of 2020

and

C.M.P.(MD)No.4759 of 2020

Sadamunian (Died)

- 1.Muniyasamy
- 2.Kathamathan
- 3.Pappa

... Appellants

/Vs./

- 1.Devanai
- 2.Arumugam
- 3.Madaswamy
- 4.Madhavi
- 5.Murugasakthi
- 6.Sakthi
- 7.Muniyasamy
- 8.Murugaselvam
- 9.Chandira

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 13.02.2020, passed in A.S.No.36 of 2018 on the file of the Sub Court, Mudukulathur,



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confirming the Judgment and Decree, dated 16.03.2016, passed in O.S.No.78 of 2014, on the file of the District Munsif Court, Mudukulathur.

For Appellants : Mr.S.Rajasekar
For Respondents : Mr.P.T.S.Narendravasan

JUDGMENT

The defendants in the suit are the appellants in the present second appeal. The suit was allowed in favour of the plaintiffs. Aggrieved over the same, the defendants had preferred first appeal. In the first appeal, the defendant had produced a judgment rendered in O.S.No.48 of 1962, dated 10.07.1963. The First Appellate Court has dealt with the said judgment, however, without marking the said judgment. Therefore, the defendants could not effectively adduce the evidence.

2. The plaintiffs / respondents submitted that the said judgment states only Pymas number and there is no correlation that is why the First Appellate Court has not taken the judgment into account. However, if the correlation is established, the identification of the property could be



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established. The First Appellate Court has rendered the impugned judgment without granting an opportunity to establish the defendants' case that too without marking the judgment which is erroneous. In fact, the First Appellate Court has recorded that in Pymas 1338, there are two properties. When there are two properties admittedly, it has to be identified. Therefore, it is necessary that the First Appellate Court ought to grant an opportunity to the parties to establish the same.

3. Therefore, the said judgment and decree ought to be set aside and the case ought to be remitted back to the lower court for reconsideration. At this juncture the Learned Counsel appearing for the respondents herein submitted that the case may be remitted to First Appellate Court. The said judgment in O.S.No.48 of 1962 was not produced before the Trial Court, but when the Trial Court has allowed the suit, it would be appropriate for the Trial Court to consider the issue. Hence the case ought to be remitted to Trial Court rather than First Appellate Court.



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4. Therefore, this Court has set aside both the judgments of the Trial Court and the First Appellate Court and the case is remitted back for reconsideration. The parties are at liberty to file additional pleadings, produce all evidence before the Court and thereafter, the issue shall be decided as per the evidences. The said exercise shall be completed within a period of six months from the date of receipt of a copy of this judgment. With the above said observations, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.12.2023

Index : Yes / No

NCC : Yes / No

Tmg



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TO:

1. Sub Court, Mudukulathur.
2. District Munsif Court, Mudukulathur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.400 of 2020

Dated:
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