



C.M.A(MD)No.556 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.06.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.556 of 2019

and

C.M.P(MD)No.6657 of 2019

1.Radhakrishnan

2.Savithri

... Appellants/Respondents 1&2/
Defendants 1&2

Vs.

1.Ramakrishnan

2.Sankar

... Respondents/Appellants/
Plaintiffs

3.The District Collector,
District Collectorate Office,
Pudukottai.

4.The District Revenue Officer,
District Collectorate Officer,
Pudukottai.

5.The Revenue Divisional Officer,
Divisional Office,
Pudukottai.

6.The Tahsildar,
Alangudu Tahsildhar Office,
Pudukottai.

7.The Sub-Registrar,
District Registration Office,
Pudukottai.

... Respondents/Respondents 3-7/
Defendants 3-7



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PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of Code of Civil Procedure, to call for the records and set aside the order of remand as per the judgment and decree, dated 25.02.2019 in A.S.No.97 of 2014 on the file of Principal Sub Court, Pudukottai reversing the judgment and decree, dated 11.07.2014 in O.S.No.160 of 2010 on the file of District Munsif Court, Pudukottai.

For Appellants : Mr.H.Lakshmi Shankar

For R1&R2 : No Appearance

For R3-R7 : Mr.N.GA.Natraj

JUDGMENT

The defendant in a suit for declaration of title and permanent injunction is the appellant herein challenging the order of remand passed by the first appellate Court.

2. The respondent herein had filed O.S.No.160 of 2010 on the file of District Munsif Court, Pudukottai for the relief of declaration of title and permanent injunction. After contest, the suit was dismissed by the trial Court. The plaintiff had filed A.S.No.97 of 2014 before Sub Court, Pudukottai. The learned Subordinate Judge was pleased to allow the appeal and has remitted the matter back to the trial Court on the ground that certain issues have not been properly appreciated by the trial Court.

<https://www.mhc.tn.gov.in/judis>

This order of remand is under challenge in this appeal by the defendants.



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3. The parties to the suit have admitted that the suit schedule property belonged to one Viswanatha Iyer and he had two daughters by name, Bavani Ammal and Rajalakshmi. It is also an admitted fact that the said Viswanatha Iyer had adopted the 1st plaintiff Ramakrishnan by an adoption deed, dated 14.05.1984 under Exhibit A.1.

4. It is the case of the plaintiffs that being an adopted son of the Viswanatha Iyer, he has got share in the property. The 2nd plaintiff, namely Shankar was adopted by the daughter of Viswanatha Iyer by way of a document, dated 15.05.2000 marked as Exhibit A.5. Therefore, the plaintiffs are having absolute title over the property.

5. Per contra, the defendants have contended that though Viswanatha Iyer has adopted Ramakrishnan, he had executed a registered Will in favour of his daughter, namely Bavani Ammal under Exhibit B.1. The said Bavani Ammal has executed a registered sale deed under Exhibits B.2 and B.3 in favour of defendants 1 and 2. Therefore, according to the defendants, though Ramakrishnan is the adopted son, Viswanatha Iyer had not died intestate and therefore, Ramakrishnan will not have any title over the property. The defendants have further contended that since Bavani Ammal has already executed the sale deed



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in favour of them, even assuming that the 2nd plaintiff has been adopted by Bavani Ammal, he cannot have any title to possession over the suit schedule properties.

6. The trial Court after considering the oral and documentary evidence had arrived at a finding that though the 1st plaintiff has proved the adoption, the defendants have established their title by proving Exhibits B.1 to B.3. Therefore, the adoption of the 1st plaintiff or the 2nd plaintiff will not have any effect over the suit for declaration of title. This judgment and decree was challenged by the plaintiffs before the first appellate Court.

7. The first appellate Court found fault with the trial Court for not framing an issue with regard to the validity of adoption of the 2nd plaintiff under Exhibit A.5. The first appellate Court further found that the trial Court has not properly appreciated the evidence and has not answered various issues in a proper manner. On the said ground, the first appellate Court has set aside the judgment and decree of the trial Court and has remitted the matter back to the trial Court. This order is under challenge in the present appeal.



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8. According to the learned counsel appearing for the appellant, even assuming without admitting that the plaintiffs 1 and 2 have been adopted by Viswanatha Iyer and his daughter Bavani Ammal respectively, that is not going to have any effect over the suit for declaration of title and permanent injunction. The issue relates to the property rights of the plaintiffs and the defendants based upon the genuineness and validity of Exhibits B.1 to B.3. If the defendants were able to establish the genuineness and validity of Exhibits B.1 to B.3, the alleged adoption will not have any effect over the result of the suit. Therefore, for the said aspect, the first appellate Court was not right in remitting the matter back to the trial Court.

9. I have perused the order of remand passed by the first appellate Court.

10. It is the duty of the first appellate Court to re-appreciate the oral and documentary evidence that were received by the trial Court. However, the first appellate Court has blamed the trial Court for not properly appreciating the oral and documentary evidence. In case, if the first appellate Court finds that the oral and documentary evidence which are already on record have not been properly considered or appreciated,



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it is for the first appellate Court to properly appreciate them and arrive at a different finding. For the said purpose, an order of remand cannot be passed. That apart, the finding of the first appellate Court with regard to the adoption is concerned, the trial Court has specifically found that it is a property dispute and the issue of adoption will not have any relevance whatsoever with regard to the prayer for declaration of title and permanent injunction.

11. In case, the defendants were able to establish the genuineness and validity of Exhibits B.1 to B.3, the issue relating to adoption of the 2nd plaintiff pales into insignificance. In case, if they were not able to establish the genuineness and validity of Exhibits B.1 to B.3, even then the 1st plaintiff would be one of the sharers along with two other daughters of Viswanatha Iyer. The trial Court has given a specific finding that at the time of adoption of the 2nd plaintiff, was aged more than 15 years which is against law. Therefore, it is for the first appellate Court to consider the finding after hearing both the parties.

12. In view of the above said facts, the order of remand passed by the first appellate Court is not legally sustainable and the same is set aside. The matter is remitted back to the file of the first appellate Court to consider the appeal on merits and in accordance with law after giving



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due opportunity to both the parties. The appeal shall be disposed of on or before 31.12.2023.

13. In view of the above said deliberations, the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.06.2023

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

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To

- 1.The Principal Sub Court,
Pudukottai.
- 2.The District Munsif Court,
Pudukottai.
- 3.The District Collector,
District Collectorate Office,
Pudukottai.
- 4.The District Revenue Officer,
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- 6.The Tahsildar,
Alangudu Tahsildhar Office,
Pudukottai.
- 7.The Sub-Registrar,
District Registration Office,
Pudukottai.
- 8.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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