



C.M.A.(MD)No.380 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.380 of 2021

and

C.M.P.(MD)No.3269 of 2021

Chithravel

...Appellant/Respondent/Defendant

Vs.

Chitra

...Respondent/Appellant/Plaintiff

PRAYER: This Civil Miscellaneous Appeal is filed under Section 43 Rule 1 of the Civil Procedure Code, to set aside the order of remand made in A.S.No.34 of 2019 dated 30.09.2020 passed by the learned Subordinate Court, Pattukottai by which setting aside the decree and judgment passed in O.S.No.93 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Orathanadu dated 20.01.2014 and restore the decree and judgment of the trial Court.

For Appellant : Mr.P.Vadivel

For Respondent : Mr.G.Mohankumar



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JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the decree and judgment, by which the First Appellate Court set aside the judgment of the trial Court and remanded the same to the trial Court for fresh disposal.

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

3.The brief facts, leading to the filing of the civil miscellaneous appeal, are as follows:-

(i) The suit property is the ancestral property of the husband of the plaintiff. In a oral partition, the suit property was allotted to the husband of the plaintiff. The husband of the plaintiff is residing in abroad. Hence, the plaintiff constructed a house in the said property. However, the patta was wrongly issued in the name of the defendant's father. The husband of the plaintiff filed a petition for change of patta, whereas the revenue authorities have issued a joint patta in the name of the plaintiff's husband and the defendant. Hence, the husband of the plaintiff file an appeal against the said order. In the meanwhile, the defendant



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encroached 4 cents of land in the suit property and constructed a house. Hence, the suit has been filed claiming the relief of declaration, recovery of possession and permanent injunction with regard to the suit property.

(ii) In the written statement, the defendant had taken a stand that Veeran Sethurayar @ Veerappan Sethurayar is the great grandfather of the defendant. After his demise, his son, the father of the defendant, inherited the suit property. There was no oral partition as alleged by the plaintiff. The house of the plaintiff is located on the western side of the suit property. The revenue authorities without conducting any enquiry had falsely entered the name of the plaintiff's husband in the joint patta. Neither the plaintiff nor the predecessors of the plaintiff's husband enjoyed the suit property. Hence, he opposed the suit.

(iii) The trial Court on appreciation of evidence available on record had dismissed the suit. Challenging the same, an appeal was filed by the plaintiff. During the appeal stage, an application for reception of additional documents was filed in I.A.No.45 of 2020.



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(iv)The First Appellate Court having allowed the application for reception of certain documents set aside the decree and judgment of the trial Court and remanded the matter for fresh consideration and for additional pleadings with regard to the additional documents before the trial Court by the parties. Challenging the said remand order, this appeal came to be filed.

4. I have heard the learned counsel appearing on either side and also perused the materials available on record.

5.In view of the above facts, now the point arises for consideration in this appeal is:

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

6.Without going into the merits of the case, this Court is of the view that the very order of remanding the matter by setting aside the decree and judgment of the trial Court for fresh consideration in its entirety by the appellate Court is not



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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 issued, 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 direction to take additional evidence if necessary.

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. It is also relevant to note that even prior to admitting the documents filed under Order 41 Rule 27 CPC., the appellate Court had gone into the merits of those documents and recorded findings. The same is also not in accordance with law. Besides, the appellate Court set aside the entire decree and judgment and remanded the suit to the trial Court for adducing additional evidence, which is also against the very fundamental principle of law.

10.Once an application filed under Order 41 Rule 27 CPC is allowed by the Appellate Court, the appellate 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. 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. This Court has come across such situations very regularly. Such practice has to be deprecated by the First Appellate Courts. 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



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additional evidence, which had been received under Order 41 Rule 27 CPC and give proper opportunity to both sides to adduce any oral evidence or rebuttal evidence and then decide the appeal on its own merits. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

11. With the above direction, this Civil Miscellaneous Appeal is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

28.04.2023

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

1. The District Munsif cum Judicial Magistrate Court, Orathanadu.
2. The Sub Court, Pattukottai.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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