



C.M.A.(MD)No.579 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.579 of 2022

and

C.M.P.(MD)No.4979 of 2022

Senthil Vinayagam

...Appellant/Plaintiff

Vs.

Aiyammal

...Respondent/Defendant

PRAYER: This Civil Miscellaneous Appeal is filed under Order XLIII Rule I(U) of Civil Procedure Code, to set aside the judgment and decree dated 29.03.2019 passed in A.S.202 of 2017 on the file of the learned Sub-Court, Tiruchendur by setting aside the decree and judgment dated 21.01.2014 made in O.S.No.185 of 2010 on the file of the learned District Munsif Court, Tiruchendur.

For Appellant : Mr.S.R.Anbarasu
for Mr.T.R.Janarthanan

For Respondent : Mr.M.P.Senthil



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JUDGMENT

This Civil Miscellaneous Appeal had been directed against the order passed by the Appellate Court in remanding the entire matter to the trial Court for fresh consideration mainly on the ground that the respondent had filed an application for reception of additional documents under Order 41 Rule 27 of the Civil Procedure Code (hereinafter referred to as 'CPC' for the sake of brevity).

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

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

(i)the suit has been originally filed by the plaintiff seeking declaration and recovery or possession on the basis of the gift deed said to have been executed by the grandfather of the plaintiff under Ex.A1.



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The defendant had totally denied the execution of the document by the grandfather of the plaintiff.

(ii)The trial Court originally decreed the suit in favour of the plaintiff. Thereafter, an application was taken out for reception of additional documents before the appellate Court with the contention that the defendant had infact executed necessary documents in favour of the plaintiff and hence, those documents are necessary to decide the matter. 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.



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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 of suit by setting aside the decree and judgment of the trial Court for fresh consideration in its entirety by the appellate Court is not 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.



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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.



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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. 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 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.



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11. With the above direction, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

30.03.2023

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

1. The Sub-Court, Tiruchendur.
2. The District Munsif Court, Tiruchendur.
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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