



C.M.A.(MD).No.61 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.61 of 2014

and

M.P(MD) No.1 of 2014

1. Sankaran Pillai @ A.Murugan

2. Sornam

... Appellants/Respondents 1&2/
Defendants 2 & 3/
Cross Objectors 1 and 2

-vs-

1. Gopalakrishnan

2. Valli

3. Yogheeswaran

... 1st Respondent/Appellant/
Plaintiff

... Respondents 2 & 3/
Respondents 3 & 4/
Defendants 4 & 5

4. Chandra

... 4th Respondent/ 5th Respondent
7th Defendant

5. Renukadevai

... 5th Respondent/
Impleaded Respondent/
3rd Party

PRAYER: Civil Miscellaneous Appeal filed under Section 43 Rule 1 (U) r/w Section 104 of C.P.C., to set aside the order passed by the learned District Judge, Kanyakumari Division at Nagercoil, dated 23.07.2013 in A.S.No.35 of 2006 & Cross Objections and remand the same.



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For Appellants : Mr.N.Dilip Kumar

For Respondents : Mr. E.V.N.Siva – for R1
No appearance For – R2 to R5

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the defendants 2 and 3 in a suit for specific performance challenging the order of remand passed by the first appellate Court.

2. The first respondent herein as plaintiff has filed O.S.No.113 of 1990, originally, for the relief of recovery of advance amount on the basis of a sale agreement dated 23.04.1987. Later, the plaint was amended to incorporate the relief of specific performance. The trial Court found that the relief of specific performance is barred by limitation, but proceeded to grant a money decree in favour of the plaintiff for a sum of Rs.43,500/- (Rupees Forty Three Thousand and Five Hundred only). The plaintiff had challenged the rejection of specific performance decree in A.S.No.35 of 2006. The defendants 2 and 3 have filed Cross Objection challenging the money decree.



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3. Pending first appeal, the defendants have sold a portion of the property to a third party viz., Renukadevi. The plaintiff had filed I.A.No.84 of 2011 to implead the said *pendentilite* purchaser as one of the parties to the appeal. Though it was opposed by the respondents/defendants, ultimately, it was allowed. The learned first appellate Judge has allowed I.A.No.84 of 2011 and on the said ground, he has set aside the judgment and decree of the trial Court and remitted the matter back to the trial Court. This order of remand is under challenge in the present appeal.

4. According to the learned counsel appearing for the appellants, by way of a common order in I.A.No.84 of 2011 and A.S.No.35 of 2006, the first appellate Court has set aside the judgment and decree of the trial Court and remitted the matter back to the trial Court. Except the impleading of a *pendentilite* purchaser, no reason has been assigned by the first appellate Court for setting aside the judgment and decree of the trial Court. Hence, he prayed for setting aside the order of remand.

5. Per contra, the learned counsel appearing for the first respondent/ plaintiff had contended that when a new party is added during the appeal



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proceedings, certainly, an opportunity has to be granted to file a written statement in order to defend the case. Therefore, the first appellate Court was right in remitting the matter back to the trial Court.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

7. A perusal of the judgment and decree of the first appellate Court indicates that the first appellate Court has not set aside or reversed any one of the findings of the trial Court. It is settled position of law, that an order of remand cannot be passed without setting aside the findings of the trial Court. After setting aside the findings of the trial Court, the first appellate Court shall also record a finding that it is not in a position to arrive at a conclusion, in view of lack of oral or documentary evidence and then only, the matter can be remitted back to the trial Court. In the present case, both the ingredients have not been satisfied. The impleading of a *pendentilite* purchaser cannot be a ground to remand the matter back to the trial Court. That apart, the purchaser had only entered into the shoes of the defendants and therefore, he cannot have an independent defence in the said suit. Therefore, no purpose



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would be served remitting the matter back to the trial Court.

8. In view of the above said deliberations, the order of remand is hereby set aside and the matter is remitted back to the file of the first appellate Court, for considering the first appeal and the Cross Objection on merits and in accordance with law. After giving due opportunity to all the parties concerned, the first appellate Court shall do well to dispose of the appeal on or before **31.12.2023**.

9. Accordingly, this Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

22.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The District Judge,
Kanyakumari Division at Nagercoil.

2. The Section Officer,



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Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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