



C.M.A.(MD).No.954 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.954 of 2014

and

M.P(MD) No.1 of 2014

K.G.Ashok

... Appellant/3rd Respondent
3rd Defendant

-VS-

1. Devakirani

... 1st Respondent/Appellant/
Plaintiff

K.Govindarajulu (Died)

2. K.G.Srinivasan

Pappammal (died)

3. R.Dhanalakshmi

4. Jayalakshmi

5. Papuji @ Seethalakshmi

6. G.Kannan

7. Madhavi @ Alamelumangai

... Respondents 2 to 7/
Respondents 2,5,6,7,8 and 9/
respondents 7 to 9 are LRs
of Govindarajulu
(1st Defendant)/
Defendants 1, 2, 4,5,6



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PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Code of Civil Procedure, against the order of remand passed by the learned Subordinate Judge, Pattukkottai in A.S.No.20 of 2008, dated 16.12.2013, by which, set aside the judgment and decretal order dated 27.04.2007 made in O.S.No.122 of 2004 passed by the learned District Munsif, Pattukkottai.

For Appellant : Mr.S.Deenadhayan

For Respondents : Mr.B.Jameel Arasu – for R1
: Mr.C.Padmaraj – for R2 (No appearance)
: No appearance – for R3 to R7

J U D G M E N T

The present appeal has been filed by the 3rd defendant in a suit for permanent injunction challenging the order of remand passed by the first appellate Court.

2. The 1st respondent herein as plaintiff has filed O.S.No.122 of 2004 on the file of District Munsif Court, Pattukottai, for the relief of permanent injunction. According to the plaintiff, the suit schedule property has been purchased by her under Exhibit A.1, dated 16.08.1967. The 1st defendant is her husband and the defendants 2 and 3 are her sons. According to the



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plaintiff, she has retained the house property for worshipping and offering prayers for Aadhi Parasakthi. She has further contended that the property tax assessment also stands in her name. In order to grab the property, the defendants are trying to trespass into the suit schedule property and hence, she had filed the present suit.

3. The 3rd defendant had filed a written statement contending that the suit schedule property was purchased by his father, namely, the 1st defendant on 16.08.1967 utilizing the joint family nucleus in the name of his mother for the benefit of joint family. The father is enjoying the suit schedule property. Hence, he contended that the plaintiff is neither the owner of the suit schedule property nor she is in possession of the same. The other defendants have also filed a written statement.

4. The trial Court after considering the oral and documentary evidence, arrived at a finding that the plaintiff is not the owner of the property and the present suit for permanent injunction without a prayer for declaration of title, is not maintainable. The trial Court further found that the plaintiff was not in possession of the property on the date of filing of the suit. Based on the said



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findings, the trial Court had dismissed the suit.

5. Challenging the same, the plaintiff had filed A.S.No.20 of 2008 before the Sub Court, Pattukottai. The defendants 5 and 6 have filed Cross Appeal No.56 of 2009 challenging the judgment and decree of the trial Court. The 8th respondent in the appeal, namely, K.G.Kannan had filed I.A.No.85 of 2013 to receive 3 documents as additional evidence before the appellate Court.

6. According to the said Kannan, the suit property is a joint family property and one Ashok, his brother had initiated a suit for partition in O.S.No.68 of 2008. Therefore, he wanted to mark the copy of the plaint, written statement and order of interim injunction granted in the said proceedings as additional evidence. The first appellate Court has proceeded to allow the said petitions.

7. The first appellate Court after hearing the contention of the appellant and the cross appellant, has arrived at a finding that the judgment and decree of the trial Court are liable to be set aside and accordingly, it has set aside and



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remanded the matter back to the trial Court. The order of remand is under challenge in the present appeal by the 3rd defendant in the suit.

8. According to the learned counsel appearing for the appellant, none of the findings of the trial Court have been set aside by the first appellate Court. Without setting aside the findings of the trial Court, the appellate Court ought not to have remitted the matter back to the trial Court. No reason whatsoever has been assigned by the first appellate Court for remitting the matter back to the trial Court. He further contended that the application for receipt of additional evidence has been allowed without permitting any one of the parties to let in contra evidence. When the trial Court has arrived at a specific finding that the suit is not maintainable without a prayer for declaration of title and the plaintiff was not in possession of the property on the date of filing of the suit, the first appellate Court was not right in remitting the matter back to the trial Court. Hence, he prayed for setting aside the order of remand passed by the first appellate Court. He further contended that the trial Court had arrived at a specific finding that the 4 boundaries have not been properly described in the suit schedule property in order to identify the property. Therefore, the first appellate Court ought not to have remitted the matter back



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to the trial Court.

9. Though the matter was listed today under the caption for “for orders”, the contesting respondents have not chosen to appear before this Court either in person or through their counsel.

10. It is reported that the first respondent in the appeal who was the plaintiff in the suit had passed away. However, the legal heirs were already on record in the suit filed by the first respondent herein seeking permanent injunction alleging that her sons and husband are attempting to disturb the possession. The plaintiff herself had passed away. However, two of the daughters of the plaintiff namely, Dhanalakshmi and Jeyalakshmi are claiming some kind of title from their mother. Therefore, both of them are not in a position to appear before this Court to dispute the self service.

11. A perusal of the order of the first appellate Court indicates that none of the findings of the trial Court has been set aside, and on the ground that,



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the additional evidence application has been allowed and the order of remand has been passed. A perusal of the order of the first appellate Court further indicates that the additional evidence application has been allowed without examination of any one of the parties connected with the said documents. Therefore, it is clearly in violation of Order 41 Rules 27 and 28 of C.P.C and the order passed in I.A.No.85 of 2013 is liable to be set aside.

12. In the result, the order of remand passed by the first appellate Court is set aside and this Civil Miscellaneous Appeal stands allowed and the matter is remitted back to the file of the first appellate Court. The first appellate Court is directed to strictly follow the procedure contemplated under Order 41 Rule 27 and 28 of C.P.C to decide whether such an application could be allowed in the appeal stage for marking of the documents. In case, even if the application for additional evidence stands allowed, the first appellate Court shall decide the matter after permitting the parties to let in contra evidence without remitting the matter back to the trial Court. Any evidence let in by the parties should be strictly touching upon the additional evidence alone.

13. With the above said observations, this Civil Miscellaneous Appeal



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is allowed. There shall be no order as to costs. Consequently connected
Miscellaneous Petition is closed.

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

1. The Subordinate Judge,
Pattukkottai.
2. The District Munsif,
Pattukkottai.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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