



C.M.A. (MD)Nos.1274 and 1275 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.03.2023

CORAM:

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

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C.M.A(MD).No.1274 of 2016

S.K.Chellaiah (died)

1.Santha

2.Dhanalakshmi

3.Raja Lakshmi

4.Annalakshmi

5.Seethalakshmi

6.Neelakandan

(R6 rep., by his mother Santha/1st respondent)

..Appellants/Respondents/ Plaintiffs

Vs.

Ganesan

... Respondent/Appellant/Defendant

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(U) of the Code of the Civil Procedure, to set aside the judgment and decree in A.S.No. 124 of 2007 on the file of the Subordinate Court, Pudukkottai dated 21.08.2013 setting aside the judgment and decree passed in O.S.No.163 of 1994 on the file of the District Munsif Court, Aranthangi dated 31.03.2004.

For Appellants : Mr.P.Ganapathi Subramanian

For Respondent : Mr.R.Paranjothi



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..Appellants/Respondents/ Plaintiffs

Vs.

Ganesan

... Respondent/Appellant/Defendant

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(U) of the Code of the Civil Procedure, to set aside the judgment and decree in A.S.No.30 of 2005 on the file of the Subordinate Court, Pudukkottai dated 21.08.2013 setting aside the judgment and decree passed in O.S.No.163 of 1994 on the file of the District Munsif Court, Aranthangi dated 31.03.2004.

For Appellants : Mr.P.Ganapathi Subramanian

For Respondent : Mr.R.Paranjothi

COMMON JUDGMENT

The present appeals have been filed by the plaintiff in a suit for declaration of title and permanent injunction challenging the order of remand passed by the first appellate Court.



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2. According to the plaintiff, the suit properties were originally owned by his father Karuppaiah. By way of some oral arrangement, the suit properties were allotted to his share in the year 1974 and he has been in possession and enjoyment of the same exclusively from the year 1974 onwards. However, his possession was disputed in the year 1994. He had filed the present suit for declaration of title and permanent injunction as against his brother Ganesan. The trial Court had arrived at a findings that the plaintiff has established his title and possession over the property and decreed the suit as prayed for. In the said suit, the defendant had raised a counter claim contending that the properties were not allowed to the share of the plaintiff and they continued to be undivided properties. Hence, by way of counter claim the defendant prayed for a decree for partition.

3. The trial Court since it has arrived at a finding that the properties have already been divided, the prayer for counter claim was also rejected by the trial Court. Challenging the decree in the suit and dismissal of the counter claim, the defendant had filed A.S.No.30 of 2005 and A.S.No.124 of 2007. The first appellate Court had found some discrepancies with regard to the extent of the property, for which, the prayer was sought for by the plaintiff and remanded the matter back to the trial Court providing an opportunity to the plaintiff to amend



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the plaintiff and to prove his case. This order of remand is under challenge in these present appeals by the plaintiff.

4. According to the learned counsel appearing for the appellant/plaintiff, after confirming the findings of the trial Court, the first appellate Court ought not to have remanded the matter back to the trial Court. He further contended that when the plaintiff had established his title and possession over the suit schedule property and the first appellate Court having found that the defendant has not established his case, ought not to have remitted the matter back to the trial Court for fresh consideration.

5. Per contra, the learned counsel appearing for the respondent/defendant had contended that the order of remand cannot be passed to fill up the *lacuna* on the part of the plaintiff.

6. I carefully considered the submissions made on either side.

7. The trial Court has decreed the suit of the plaintiff for the relief of the declaration of title and permanent injunction and dismissed the counter claim for



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partition. The first appellate Court in paragraph No.13 of the judgment has arrived at a finding that the plaintiff has to amend the plaint and has to let in oral and documentary evidence to prove his case. It is the settled position of law that a second chance cannot be given to the plaintiff or the defendant to establish their case, incase they have failed to let in proper evidence during trial. Therefore, the order of remand is not valid in the eye of law.

8. The findings of the first appellate Court are hereby set aside and the matter is remitted back to the file of the first appellate Court, namely, the Subordinate Court, Pudukkottai, to consider it afresh on merits and in accordance with law on the basis of the oral and documentary evidence, which are already available on record and also on the grounds raised in both the appeals.

9. With the above observation, these Civil Miscellaneous Appeals are allowed. No costs.

20.03.2023

NCC : Yes/No

Index : Yes/No

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R.VIJAYAKUMAR, J.

Rmk

To

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

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