



CMA(MD).No.82 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.03.2023

PRONOUNCED ON : 15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.82 of 2015

Latha (died)

2.Dinakaran

3.Vinoth Kumar

4.Minor Hariharan

... Appellants

(Minor 4th appellant represented by his father
and natural guardian 2nd appellant)

(Appellants 2 to 4 are brought on record as legal heirs of the deceased
sole appellant vide Court order dated 21.11.2022)

(2nd appellant appointed as guardian for the minor 4th appellant vide
Court order dated 21.11.2022)

vs.

1.Dharmar Throupathi Amman Temples and its Main Deities
Represented through its Poojari
V.Arjunan

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2.A.Veerabadran(died)

3.Nagarajan (died)

4.Adhisheshan (died)

5.Maniservai

6.Ramamoorthy

7.Murugan

8.Mani

9.Sekar

10.Uma

11.Jegaeswari

12.Dhana Backiya

13.Ponmani

14.Malliga

15.Arjunan

16.Parthiban

17.Vijayan

...Respondents

(Respondents 8 to 10 are brought on record as legal heirs of the deceased 3rd respondent vide Court order dated 21.11.2022)



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Respondents 11 and 12 are brought on record as legal heirs of the deceased 4th respondent vide Court order dated 21.11.2022)

(Respondents 13 to 17 are brought on record as legal heirs of the deceased 2nd respondent vide Court order dated 22.02.2023)

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of C.P.C, to allow the appeal and set aside the order of remand made in A.S.No.119 of 2007 on the file of the Subordinate Court, Sivagangai dated 10.09.2008 reversing the judgement and decree made in O.S.No.47 of 2002 on the file of the Principal District Munsif Court, Manamadurai dated 29.06.2007.

For Appellants : Mr.PT.S.Narendravasan

For R1, R8 to R10
R13 to R17 : Mr.S.Parthasarathy

For R5 to R7,
R11 & R12 : No appearance

JUDGMENT

The above appeal has been filed by the first defendant in a suit for declaration of title and recovery of possession challenging an order of remand passed by the First Appellate court.



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2.The respondents herein had filed O.S.No.47 of 2002 for the relief of declaration of title and recovery of possession before the Principal District Munsif Court, Manamadurai. The trial Court had arrived at a specific finding that the value of the property is more than Rs.1 lakh and therefore the said Principal District Munsif, Manamadurai did not have pecuniary jurisdiction. After arriving at a finding in relation to lack of pecuniary jurisdiction, the trial Court proceeded to dismiss the suit.

3.Challenging the order of dismissal, the plaintiff had filed A.S.No. 119 of 2007 before the Subordinate Court, Sivagangai. After setting aside the judgement and decree of the trial Court, the Appellate Court had remitted the matter back to the trial Court for fresh enquiry after affording opportunity to either side to file oral and documentary evidence. This order of remand is under challenge in the present appeal.

4.The learned counsel for the appellants had contended that if the First Appellate Court had arrived at a finding that the District Munsif



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Court lacks pecuniary jurisdiction, it ought to have directed return of the plaint to the plaintiffs and ought not to have remitted the matter back to the District Munsif Court which lacks pecuniary jurisdiction. He had further contended that no purpose would be served in remitting the matter back to the trial Court when the First Appellate Court has confirmed that the trial Court lacks pecuniary jurisdiction. Therefore, he prayed for allowing the appeal against the order of remand.

5.Per contra, the learned counsel for the respondents had contended that the power to return the plaint is vested only with the trial Court and not with the Appellate Court. Therefore, the First Appellate Court was right in remitting the matter back to the trial Court. Hence, he prayed for confirming the order of remand passed by the First Appellate Court.

6.I have considered the submissions made on either side and perused the materials available on record.



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7.From the records, it could be seen that the plaintiffs had filed a suit for declaration of title and recovery of possession before the Principal District Munsif Court, Manamadurai. The trial Court has arrived at a categorical finding that the said Court does not have pecuniary jurisdiction to entertain the suit. Having arrived at such a finding. The only course open to the trial Court is to return the plaint to the plaintiffs to be presented before the proper forum by invoking the provisions of Order 7 Rule 10 C.P.C. However, the trial Court has proceeded to dismiss the suit. When the trial Court arrives at a finding that it has no jurisdiction to entertain a suit, it could only return the plaint to be presented before the proper forum.

8.Challenging the said dismissal of the suit, the plaintiff had filed the first appeal. The First Appellate Court has also confirmed the findings of the trial Court with regard to the lack of pecuniary jurisdiction. After arriving at such a finding, the First Appellate Court had set aside the judgement and decree of the trial Court and has remitted the matter back to the trial Court providing opportunity to both the parties to let in oral and documentary evidence. Once the First Appellate



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Court has confirmed the findings of the trial Court, it is strange that the First Appellate Court has remanded the matter back to the trial Court which lacks jurisdiction to hear the matter. Therefore, the order of remand is not legally sustainable. The First Appellate Court itself ought to have passed an order for return of plaint.

9.The learned counsel for the respondents had contended that the power under Order 7 Rule 10 C.P.C to return the plaint is only vested with the trial Court and therefore, the trial Court was right in remitting the matter back to the trial Court for the purpose of return of plaint. From a reading of the judgement of the First Appellate Court, it is not evident that it is remanded only for the purpose of return of plaint. The First Appellate Court has permitted both the parties to adduce oral and documentary evidence. Therefore, it is not correct to contend that the First Appellate Court has remanded the matter back to the trial Court for the purpose of return of plaint.

10. Order 7 Rule 10 of C.P.C is extracted as follows:

“ 10. Return of plaint.- (1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be



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presented to the court in which the suit should have been instituted.

Explanation: For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.

(2) Procedure on returning —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.”

11.The explanation that was introduced by way of amendment in the year 1976 to Order 7 Rule 10(1) of C.P.C will clearly indicate that the Court of appeal or revision after setting aside the decree passed in a suit may also direct to return of the plaint under the Sub-Rule. Therefore, it is clear that the First Appellate Court or the Revisional Court is also empowered to order return of the plaint under Order 7 Rule 10 C.P.C after setting aside the decree of the trial Court. The First Appellate Court was not right in remanding the matter back to the trial Court either for adducing evidence or for return of the plaint. It should have by itself ordered return of plaint.



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12. In view of the above said deliberations, this Court is inclined to pass the following orders:

(i). The judgement and decree of the trial Court and the Appellate Court with regard to lack of pecuniary jurisdiction of the trial Court are hereby confirmed.

(ii). The Registry is directed to return all the original records to the Principal District Munsif Court, Manamadurai forthwith.

(iii). The Principal District Munsif Court, Manamadurai is directed to return the plaint along with the documents following the procedure as contemplated under Order-7 Rule 10(2) C.P.C.

(iv). All the findings and the evidence recorded by the trial Court as well as by the Appellate Court except the findings with regard to the lack of pecuniary jurisdiction are hereby set aside.

13. Accordingly, this Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs.

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NCC : Yes/No.
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- 1.The Subordinate Judge, Sivagangai
- 2,The Principal District Munsif, Manamadurai
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
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