



C.M.A(MD)No.506 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.506 of 2018

and

C.M.P(MD)No.5973 of 2018

Dharmaraj

... Appellant/Respondent/Defendant

Vs.

1.Janaki

2.Santhi

3.Manivannan

... Respondents/Appellants/Plaintiffs

PRAYER: Civil Miscellaneous Appeal is filed under Section 104 r/w Order 43 Rule 1 of the Code of Civil Procedure, to set aside the judgment and decree, dated 05.03.2018 made in A.S.No.46 of 2016 on the file of the Subordinate Judge, Thuraiyur, A.S.No.164 of 2014 on the file of the Subordinate Judge (Camp), Thuraiyur setting aside the judgment and decree, dated 03.09.2014 made in the suit and counter claim in O.S.No. 351 of 2002 on the file of the District Munsif, Thuraiyur.

For Appellant : Mr.Raguvaran Gopalan

For Respondents : Mr.R.Thangapandian



C.M.A(MD)No.506 of 2018

JUDGEMENT

WEB COPY

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

2. The respondent herein had filed O.S.No.351 of 2002 on the file of the District Munsif Court, Thuraiyur for the relief of declaration of title and permanent injunction for an extent of 23 cents in survey No. 220/1A. In the said suit, the defendants had filed a counter claim for 50 cents in Survey No.220/1.

3. The plaintiff had relied upon their parent documents namely Exhibits A.7 and A.8 which reflect the pymash number as 2064. The defendant had relied upon Exhibit B.4 which reflected the pymash number as 2250. The next document of the defendant, namely exhibit B.6 referred to the Survey No.220/1. Therefore, the issue that was before the trial Court is whether Pymash No.2064 or Pymash No.2250 is correlatable to the present survey number, namely Survey No.220/1 or not. The trial Court after considering the oral and documentary evidence, dismissed the suit filed by the plaintiff and decreed the counter claim



C.M.A(MD)No.506 of 2018

which was filed by the defendant for a larger extent in the same survey number.

4. Challenging the same, the plaintiff had filed A.S.No.46 of 2016 and A.S.No.164 of 2014 on the file of Sub Court, Thuraiyur. The first appellate Court had arrived at a finding that neither the plaintiff nor the defendant have established their case in view of the fact that they have not correlated the old pymash number with the present survey number. Only on the said ground, order of remand has been passed by the first appellate Court. The first appellate Court has remitted the matter back to the trial Court to permit the parties to let in oral and documentary evidence afresh. This order of remand is under challenge in the present appeal by the defendant.

5. The learned counsel appearing for the appellant had contended that the parties could have been permitted to correlate the old pymash number with the new survey number even before the first appellate Court and the matter should not have been remitted in entirety to the trial Court to let in fresh oral and documentary evidence on either side.



C.M.A(MD)No.506 of 2018

6. Per contra, the learned counsel appearing for the respondents had contended that unless the correlation is done, the parties would not be in a position to establish their respective cases. Therefore, in the interest of justice, the order of remand has been passed and the same may be sustained.

7. I have carefully considered the submissions made on either side.

8. The order of remand has been passed by the first appellate Court mainly on the ground that both the plaintiff and the defendant have failed to establish the correlation between the old pymash number and the survey number mentioned in the plaint schedule and in the counter claim schedule. According to the plaintiffs, the old pymash number 2064 is relatable to Survey No.220/1. On the other hand, it is the case of the defendant that old Pymash No.2250 is relatable to the present survey number, namely 220/1. Therefore, for this purpose, the suit should not have been remanded by the first appellate Court. The parties should have been permitted to let in additional evidence by placing correlation certificate from the revenue authorities connecting the old pymash number with the current survey number. The power of remand should be exercised sparingly and it cannot be ordered as a matter of course.



C.M.A(MD)No.506 of 2018

9. In view of the above said facts, the order of remand passed by the first appellate Court in both the appeals are set aside and the matter is remitted back to the file of the first appellate Court to decide both the appeals on merits and in accordance with law permitting both the parties to let in additional evidence only with regard to the aspect of correlation of old pymash number with the new survey number. The parties shall not be permitted to let in any other oral or documentary evidence except with regard to the process of correlation.

10. With the said observations, the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.03.2023

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

gbg



C.M.A(MD)No.506 of 2018

WEB COPY

To

- 1.The Subordinate Judge,
Thuraiyur.
- 2.The District Munsif,
Thuraiyur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.506 of 2018

R.VIJAYAKUMAR ,J.

gbg

Order made in
C.M.A(MD)No.506 of 2018

28.03.2023