



C.M.A.(MD).Nos.477 and 478 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2023

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).Nos.477 and 478 of 2021

and

C.M.P.(MD).Nos.4189, 4192, 4193 and 4194 of 2021

C.M.A.(MD).No.477 of 2021

M.N.S.A.Mohamed Kasim (died)

2.Kathija Beevi

3.Ayas Mohamed

4.Mohamed Riswan

A2 to A4 are brought on record as LR's of the

deceased sole appellant vide Court order dated

29.03.2021 made in C.M.P.(MD).Nos.2805, 2807, 2010

and 2814 of 2021 in C.M.A.(MD).SR.Nos.72625 and 72620 of 2019.

... Appellants

Vs.

1.Tmt.Rani R.B.K.Rajeswari Nachiyar

2.Packiammal

... Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Order 43 Rule 1U of the Civil Procedure Code, against the final decree and judgment passed in A.S.No.8 of 2018 on the file of the Principal District Court, Ramanathapuram dated 21.03.2019 remanding the case to trial Court passed in O.S.No.14 of 2008, on the file of the Subordinate Court, Ramanathapuram District dated 08.12.2017.



C.M.A.(MD).Nos.477 and 478 of 2021

For Appellants : Mr.K.R.Laxman
For R1 : Mr.S.Ramesh
For R2 : No appearance

C.M.A.(MD).No.478 of 2021

M.N.S.A.Mohamed Kasim (died)

2.Kathija Beevi

3.Ayas Mohamed

4.Mohamed Riswan

A2 to A4 are brought on record as LR's of the deceased sole appellant vide Court order dated 29.03.2021 made in C.M.P.(MD).Nos.2805, 2807, 2010 and 2814 of 2021 in C.M.A.(MD).SR.Nos.72625 and 72620 of 2019.

... Appellants

Vs.

Tmt.Rani R.B.K.Rajeswari Nachiyar

... Respondent

PRAYER: The Civil Miscellaneous Appeal is filed under Order 43 Rule 1U of the Civil Procedure Code, against the final decree and judgment passed in A.S.No.19 of 2018 on the file of the Principal District Court, Ramanathapuram dated 21.03.2019 remand back the case to the trial Court passed in O.S.No.1 of 2006, on the file of the Subordinate Court, Ramanathapuram District dated 08.12.2017.

For Appellants : Mr.K.R.Laxman
For Respondent : Mr.S.Ramesh



C.M.A.(MD).Nos.477 and 478 of 2021

COMMON JUDGMENT

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Challenging the order of remand and setting aside the judgment of the trial Court, the present appeals came to be filed.

2. The suits in O.S.Nos.1 of 2006 and 14 of 2008 have been filed for declaration and injunction. The trial Court has decreed the suit in O.S.No.1 of 2006 decreed and the suit in O.S.No.14 of 2008 and dismissed the suit in O.S.No.14 of 2008 in a common judgment dated 08.12.2017. Aggrieved over the same, two appeals have been filed before the first appellate Court. The first appellate Court almost confirming the finding of the trial Court. However, set aside the same and remanded the matter back to the trial Court, mainly on the basis of the oral submission of the counsel to the effect that the suit property has been purchased by more than 45 individuals. Therefore, the first appellate Court took a view that unless all the purchasers have been impleaded, *lis* cannot be decided properly. The suits have been filed based on certain documents claiming title over the property.

3. The learned counsel appearing for the appellants would submit that the so called purchases were made during the pendency of the suit, otherwise it is only *lis* pendency purchase. Therefore, the trial Court has set aside the



C.M.A.(MD).Nos.477 and 478 of 2021

judgment and decree and remanded the entire *lis* once again, which is not according to law.

4. The learned counsel appearing for the respondents would fairly submit that all the purchases were made during the pendency of the appeal and it is hit under Section 52 of the Transfer of Property Act and subject to the result of the suit.

5. In the light of the above submissions, now the point for consideration in these appeals is whether the first appellate Court is right in remanding the matter by setting aside the decree and judgment of the trial Court, merely on the basis of the oral submissions and also on the ground of sale in favour of the third parties?

6. As rightly pointed out by the learned counsel for the appellants that the purchase made to the third parties indicate that the sales have been effected from the year 2005 till 2011, during the pendency of the suit, which has not been disputed by the other side. In fact, all these sale deeds also verified before the Court and it is admitted by the other side that the sale made during the pendency of the suit. This fact has not been disputed. Such being the position,



C.M.A.(MD).Nos.477 and 478 of 2021

the subsequent sale is always subject to the result of the main suit. The doctrine of *lis pendens* will come into play and the said validity of the sale would be subject to the result of the same. Such being the position, impleading all the subsequent *lis pendens* purchasers and hearing them to establish the title does not arise at all. Therefore, mechanically remanding the matter on that ground cannot be sustained in the eye of law.

7. The remand is permissible only in the circumstances contemplated under Order 41 Rule 23(A), 24 and 25 of C.P.C. The remand is not an automatic. Under Order 41 Rule 23 of C.P.C., when the trial Court has decided the suit only upon a preliminary issue, the same is set aside in the appeal, appellate Court can very well remand the matter once again for answering all the issues. Under Rule 23(A) of C.P.C., when the first appellate Court come to the definite conclusion that the retrial is absolutely necessary, then such case the remand is permissible. Under Order 41 Rule 24, despite sufficient evidence available, necessary issue has not been framed by the trial Court, the appellate Court may frame the issues and under Order 41 Rule 25, when the trial Court has omitted to frame any issues and determined in question of fact, in such case, the appellate Court may remand the matter. In the above circumstances, the remand is possible.



C.M.A.(MD).Nos.477 and 478 of 2021

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8. In this case, the remand is made only on the ground that the *lis pendens* purchases have been affected. It is relevant to note that the *lis pendens* purchase is always subject to the result of the judgment and decree of the suit.

9. Such being the position, this Court is of the view that for giving opportunity to the *lis pendens* purchasers, matter cannot be remanded. Accordingly, the order of the first appellate Court remanding the matter to the trial Court is set aside and the first appellate Court shall decide the appeals on its own merits, within a period of three months from the date of receipt of a copy of this order, without being influenced by the observations made in these appeals.

10. In the result, these Civil Miscellaneous Appeals are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

08.06.2023

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To

1. The Principal District Court,
Ramanathapuram.



C.M.A.(MD).Nos.477 and 478 of 2021

2.The Subordinate Court,
Ramanathapuram District.



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C.M.A.(MD).Nos.477 and 478 of 2021

N.SATHISH KUMAR,J.

akv

C.M.A.(MD).Nos.477 and 478 of 2021

08.06.2023