

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2023

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.956 of 2017

and

C.M.P(MD)No.10036 of 2017

Rajamanickam

... Appellant/Respondent/
Plaintiff

Vs.

Thiruganasambandham

... Respondent/Appellant/
Defendant

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of Code of Civil Procedure, against the judgment and decree passed in A.S.No.1 of 2016 on the file of Principal Sub Court, Thanjavur dated 14.03.2017 remanding back the judgment and decree passed in O.S.No. 145 of 2005 on the file of District Munsif Court, Thanjavur dated 31.10.2014.

For Appellant : Mr.R.Rajaraman

For Respondent : Mr.P.Vadivel

JUDGEMENT

The present appeal has been filed by the plaintiff in a suit for declaration of title, recovery of possession and mandatory injunction, challenging an order of remand passed by the first appellate Court.

2. The appellant herein had filed O.S.No.145 of 2005 on the file of the District Munsif Court, Thanjavur for the relief of declaration of title, recovery of possession and mandatory injunction. The trial Court had decreed the suit as prayed for. The defendant had filed A.S.No.1 of 2016 on the file of the Principal Sub Court, Thanjavur. The learned Subordinate Judge has allowed the appeal and remitted the matter back to the trial Court on the ground that the trial Court has not framed any issue with regard to the plea of adverse possession raised by the defendant.

3. The plaintiff had claimed title to the property on the basis of settlement deed, namely Exhibit A.1. However, the defendant had contended that by way of an unregistered agreement, dated 25.02.1989, the plaintiff has given up the property in favour of the defendant and based upon the same, he is in possession of the property. Thus, the defendant had claimed adverse possession over the property.

4. The trial Court had framed an issue whether the plaintiff is entitled to the prayer for declaration of title and answered the said issue that the plaintiff is entitled to declaration of title after arriving at a finding that the defendant has not established his possession from the

year 1989 onwards. However, the first appellate Court has reversed the said finding on the ground that without framing any specific issue with regard to adverse possession, the title of the plaintiff has been declared and proceeded to pass an order of remand. This order of remand is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant, the issue that was framed by the trial Court is enough and the pleadings raised by the defendant has also been considered by the trial Court and therefore, for non-framing of specific issue relating to adverse possession, the suit ought not to have been remanded by the first appellate Court. However, the learned counsel appearing for the respondent/defendant had contended that when the defendant had raised a specific plea with regard to the adverse possession unless an issue is framed, the parties cannot be expected to let in oral and documentary evidence with regard to the said issue.

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

7. Passing an order of remand can be done only under extraordinary circumstances and it cannot be a matter of course. When

the pleadings and evidence are already on record, the question of non-framing of a specific issue with regard to adverse possession would not arise. Therefore, the first appellate Court was not right in remitting the matter back to the trial Court. The first appellate Court is at liberty to consider the plea of the defendant relating to the adverse possession in accordance with law.

8. With the said observations, this Civil Miscellaneous Appeal stands allowed and the order of remand is set aside. The first appellate Court is directed to dispose of the appeal on or before 31.12.2023. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

17.03.2023

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

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To

- 1.The District Munsif Court,
Thanjavur.
- 2.The Principal Sub Court,
Thanjavur.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.956 of 2017

R.VIJAYAKUMAR ,J.

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Order made in
C.M.A(MD)No.956 of 2017

17.03.2023