



C.M.A.Nos.1295, 1311,. 1333 & 1369 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.1295, 1311, 1333 & 1369 of 2021

and

C.M.P Nos.6593, 6645, 6762 and 7039 of 2021

C.M.A No.1295 of 2021

K.U.Rangaraj

... Appellant

..Vs..

1.Rukkummal @ Palaniammal(died)

2.Rukkammani

3.Muthammal

Mrs.Ramathal (died after disposal of A.S)

4.Revathy

5.R.Appusamy

(5th respondent was brought on record as legal heirs of the deceased 1st respondent as per the order of this Court dated 07.11.2023 made in CMP Nos.22862,22876, 22879, 24852 to 24860 & 24862 of 2023)

(cause title accepted vide this Court order dated 09.03.2021 made in CMP Nos. 4426, 4385, 4435, 4386 of 2021 in CMA SR.10084, 10083, 10085 & 10086 of 2021

...Respondents



C.M.A.Nos.1295, 1311,. 1333 & 1369 of 2021

C.M.A No.1311, 1333 and 1369 of 2021

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... Appellant

..Vs..

1.Rukkumani
2.Rukkummal @ Palaniammal(died)
3.Muthammal

Mrs.Ramathal (died after disposal of A.S)
4.Revathy
5.R.Appusamy
(5th respondent was brought on record as
legal heirs of the deceased 2nd respondent
as per the order of this Court dated 07.11.2023
made in CMP Nos.22862,22876, 22879,
24852 to 24860 & 24862 of 2023)

(cause title accepted vide this Court order
dated 09.03.2021 made in CMP Nos.
4426, 4385, 4435, 4386 of 2021 in
CMA SR.10084, 10083, 10085 &
10086 of 2021

...Respondents

Prayer in C.M.A No.1295 of 2021: Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of CPC against the common judgment and decree dated 20.12.2019 passed in A.S No.33 of 2018, by the learned V Additional District and Sessions Judge, Coimbatore, by remanding back to the trial Court as against the decree and judgment dated 13.07.2017 passed



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in O.S No.64 of 2012 by the learned First Additional Subordinate Judge, Coimbatore.

Prayer in C.M.A No.1311 of 2021: Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of CPC against the common judgment and decree dated 20.12.2019 passed in A.S No.90 of 2018, by the learned V Additional District and Sessions Judge, Coimbatore, by remanding back to the trial Court as against the decree and judgment dated 13.07.2017 passed in O.S No.415 of 201` by the learned First Additional Subordinate Judge, Coimbatore.

Prayer in C.M.A No.1333 of 2021: Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of CPC against the common judgment and decree dated 20.12.2019 passed in A.S No.53 of 2018, by the learned V Additional District and Sessions Judge, Coimbatore, by remanding back to the trial Court as against the decree and judgment dated 13.07.2017 passed in O.S No.518 of 2011 by the learned First Additional Subordinate Judge, Coimbatore.

Prayer in C.M.A No.1369 of 2021: Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of CPC against the common judgment and decree dated 20.12.2019 passed in A.S No.54 of 2018, by the learned V Additional District and Sessions Judge, Coimbatore, by remanding back to the trial Court as against the decree and judgment dated 13.07.2017 passed in O.S No.413 of 2012 by the learned First Additional Subordinate Judge, Coimbatore.



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C.M.A No.1295 of 2021

For Appellant

: Mr.C.Veeraraghavan

For Respondents

: Mr.C.D.Johnson for R2-R4

C.M.A Nos.1311, 1333, & 1369 of 2021

For Appellant

: Mr.C.Veeraraghavan

For Respondents

: Mr.C.D.Johnson for R1, 3 & 4

COMMON JUDGMENT

These four appeals have been filed challenging the common order of remand passed by the lower Appellate Court namely, V Additional District and Sessions Judge, Coimbatore in A.S Nos.33 of 2018, 53 of 2018, 54 of 2018 and 19 of 2018.

2.The appellant and the respondents 1 to 3 and the deceased Ramathal, who is the mother of the 4th respondent herein, are siblings. The appellant is the brother and the respondents 1 to 3 and the deceased Ramathal are the sisters. The appellant had filed a suit for bare injunction before the First Additional Sub Court, Coimbatore in O.S No.64 of 2012.



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Thereafter, the respondents 1 to 3 and the deceased Ramathal, who are the sisters of the appellant filed four separate suits. Three suits were filed for partition and one suit was filed for permanent injunction. All the suits tried and heard together. There was a joint trial of all the suits and a common judgment came to be passed by the trial Court. As per the common judgment, the suit filed by the appellant for bare injunction came to be decreed in favour of the appellant and the suits filed by the respondents 1 to 3 and the deceased Ramathal for partition as well as for injunction came to be dismissed.

3. Aggrieved by the common judgment of the trial Court, the respondents 1 to 3 and the deceased Ramathal, who are the sisters of the appellant preferred first appeals in A.S Nos.33 of 2018, 53 of 2018, 54 of 2018 and 19 of 2018 on the file of the V Additional District Court, Coimbatore. Under the impugned common judgment dated 20.12.2019 passed in the aforesaid first appeals, the lower Appellate Court, after setting aside the common judgment and decree passed by the trial Court has remanded the matter back to the trial Court for fresh consideration.



Aggrieved by the order of the remand, these four appeals have been filed by the appellant, who is the brother of the respondents 1 to 3 and the deceased Ramathal.

4. The lower Appellate Court remanded the matter back to the trial Court for fresh consideration on the following grounds:

a) The respondents have disputed the existence of a Will in favour of the appellant. The respondents have claimed that the Will is a forged and fabricated document.

b) The appellant has not examined any other witnesses to the Will but has only examined the scribe.

c) The appellant has not examined any of the legal heirs or any other person who is well acquainted with the signatures of the witnesses to the Will.

d) The appellant has not explained as to why none of the relations of the deceased attestor were not examined to prove the signature of the testator. It is also



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*not the case of the appellant that such witnesses
(relatives) were not available for letting in evidence.*

5. To re-examine the issue due to the aforementioned reasons, the lower Appellate Court has remanded the matter back for fresh consideration by the trial Court. Admittedly, the appellant and the respondents 1 to 3 and the deceased Ramathal are siblings. The appellant is the brother and the respondents 1 to 3 are the sisters. The appellant claims that by virtue of a Will executed by his parents, he became the absolute owner of the suit schedule property. However, the same is disputed by the respondents 1 to 3 who claim that there was no Will executed by their parents. After giving due consideration to the reasons given by the lower Appellate Court for remanding the matter back to the trial Court for fresh consideration, this Court does not find any infirmity in the same. The appellant instead of contesting the dispute on merits before the trial Court, pursuant to the order of remand has filed these appeals before this Court.

6. These appeals were filed in the year 2021 and now, we are in 2024. Instead of approaching this Court, if the appellant had gone before the trial



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Court pursuant to the order of the remand, the trial itself would have got completed and the verdict would have been rendered. Therefore, no useful purpose will be served, if these appeals are entertained at this stage, that too when this Court does not find any infirmity in the findings of the lower Appellate Court. However, in the interest of all the parties to the dispute, a direction will have to be issued by this Court for earlier disposal of the suits.

7. In the result, these appeals are disposed of by directing the trial Court namely, First Additional Subordinate Judge, Coimbatore to dispose of the suits in O.S Nos.413 of 2011, 415 of 2011, 518 of 2011, 64 of 2012, and 1249 of 2011 within a period of four months from the date of receipt of a copy of this judgment after conducting a de novo trial. Consequently, connected miscellaneous petitions are closed. No costs.

12.04.2024

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order
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To

- 1.The V Additional District and Sessions Judge,
Coimbatore.
2. The First Additional Subordinate Judge
Coimbatore.
- 3.The Section Officer
V.R.Section, High Court of Madras.



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ABDUL QUDDHOSE, J.

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