



C.M.A. No. 299 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.299 of 2021
and C.M.P. No.2028 of 2021

1. Rajendiran
2. Nagaiyan ... Defendants 6 & 8/ Respondents 6 & 8/
Appellants 1 & 2
3. Ashok Kumar
4. Ramesh
5. Rajarajan
6. Suresh ... Third Party / Respondents 9 to 12/
Appellants 3 to 6

Vs.

1. Vinayagamooty ... Plaintiff / Appellant/ 1st Respondent
2. The Secretary to Government,
Revenue Department,
Government of Puducherry,
Puducherry.
3. The Settlement Officer,
Directorate of Survey and Land Records,
Puducherry.
4. The Sub-Collector (North)
Saram, Puducherry.
5. The Tahsildar



C.M.A. No. 299 of 2021

WEB COPY

Oulgaret Taluk,
Puducherry.

6. The Sub Registrar,
Oulgaret,
Puducherry.

...Defendants 1 to 5/ Respondents No.1 to 5/
Respondents No. 2 to 6.

Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) C.P.C. against the Judgment and decree dated 12.08.2020 passed in A.S.No.22/2019 on the file of the Principal Sub Court, Puducherry setting aside the Judgment and Decree in O.S.No.1348/2012, dated 24.04.2018 on the file of I Additional District Munsif Court, Puducherry and remanding the suit under Order 41 Rule 23 (A) C.P.C to the I Additional District Munsif Court, Puducherry.

For Appellants : M/s. K. Chandrasekaran
For R1 : M/s. P. Dinesh Kumar
For RR 2 to 6 : No Appearance

JUDGMENT

This Civil Miscellaneous appeal has been filed challenging the Order of remand passed in the Judgment and Decree dated 12.08.2020 in A.S. No.22 of 2019 on the file of Principal Sub Judge, Pondicherry.

2. The Appellants 1 and 2 herein are the defendants 6 and 8 in



the suit and Appellants 3 to 6 are the third party in this suit and they have arrived as Respondents 9 to 12 in the Appeal suit. The First Respondent herein is the Plaintiff. The Respondents 2 to 6 herein are Defendants 1 to 5 in the Appeal suit. For the case of convenience, the parties are referred herein as per their litigative status before the Trial Court.

3. The plaintiff has filed the suit for declaration of title to the suit property and consequently for permanent injuntion, restraining the defendants 6 to 8 from interfereing with the peaceful possession and enjoyment. He further sought for mandatory injuntion against the third respondent for registration of rectification deed with regard to suit property and for rectification of revenue records. According to the plaintiff, the suit property originally belongs to one Murugasamy Naicker S/o Munusamy Naicker. He mortgaged the property by way of registered deed, dated 25.12.1969 in favour of Boobathy S/o Murugasen Kounder, subsequently, the mortgage was also discharged. Thereafter, Murugasen Naicker along with his sons Loganathan and Mohan sold the property in favour of Ramadass S/o Rangasamy, as per the sale deed dated 27.09.1977. Thereafter, Ramadass was put in possession of the property. On



17.08.1993, Ramadass and his brother Kandasamy sold the suit property in favour of the plaintiff and one Vinayagamoorthy by way of registered sale deed.

4. The suit property is a vacant land and no tax is assessed, plaintiff is having a house in Survey No.147/3 on the north side of the suit property, he constructed a septic tank in the suit property and also fenced the suit property. In the year 2010, the plaintiff came to know that in the sale deed executed in his favour, the re-survey number of the property was wrongly mentioned as R.S. No.147/7 instead of 147/6. Even though, the survey number has been wrongly mentioned, the boundaries are properly given and based on the boundaries, the plaintiff was in possession of the property. Thereafter, he approached the vendors to rectify the survey number, but to rectify the same, the third defendant – Sub Collector (North), Puducherry consent is required. Hence, he filed an application dated 27.05.2020, seeking permission to register the rectification deed and it was not considered, hence he approached High Court seeking directions to consider his representations by the respondents 1 to 5. and same was allowed.



WEB COPY

5. On 28.10.2011, the third defendant has also passed an Order, stating that third parties have also made claim over the suit property and the plaintiff application is liable to be rejected. Thereafter, he has issued legal notices to the defendants informing that he will file a suit seeking necessary legal reliefs. In the meantime, the defendants 6 to 8 were attempted to take possession of property and it was resisted, thereafter, he has come forward with the suit, seeking various reliefs as stated above.

6. The Official defendants have filed their written statement and stated that the 2nd defendant is the authority covered under the Pondicherry Settlement Act, 1970 and he is empowered to correct the survey particulars in respect of records maintained. The plaintiff has to approach the 2nd defendant to rectify the re-survey number, without exhausting the remedy, this suit has been filed. They have also disputed the ownership of the original owner Murugasamy Naicker and the plaintiff has to prove his title over the suit property.

7. The defendant no.5, filed separate written statement and



contended that, since he is the Registering Authority for rectification of any document, the proper permission from the concerned Authority is to be obtained and the fifth defendant is unnecessary party to the suit.

8. The defendant no.7 has filed separate written statement and adopted by the defendants 6 and 8 wherein, they have denied the valid title in favour of the plaintiff. According to them, they were in possession and enjoyment of the R.S. No.147/7 from the year 1968 onwards and the revenue records also stands in thier names. The plaintiff has not approached this Court with clean hands and suppressed the material facts, hence he is not entitled for any relief in this suit.

9. The writtent statement of the defandants 1 to 4 states that, as per the settlement record, an extent of 0.1200 HAC in R.S. No.147/6 of Kalapet Village registered in the name of Rajagopal Naicker S/o Krishnappan Naicker under patta number 522. The land in R.S. No. 147/7, corresponding cadastre number 351(1/2) property stands in the name of vendor of plaintiff. The land in R.S. No.147/6 of Kalapet Village not stands in the name of vendor of plaintiff. The plaintiff has purchased an extent of



0.0200 HAC in R.S. No.147/7 Kalapet revenue village and claiming demarcation of land situated at R.S. No.147/6 of the same village, hence the same cannot be accepted.

10. After considering the evidence placed on record, the Trial Court had dismissed the suit. Aggrieved over the dismissal, the plaintiff filed an appeal before the Principal Sub Court, Puducherry wherein the Appellate Court has set aside the decree passed by the Trial Court and remanded the case under Order 41 Rule 23-A of CPC and directed the Trial Court to permit the parties to file additional document and additional evidences.

11. Aggrieved over the Order of the Appellate Court, this Civil Miscellaneous Appeal has been filed by the defendants 6 to 8, who making counter over the disputed property.

12. The learned counsel for the appellant submitted that, all the documents to decide the issue, that whether the property purchased by the plaintiff falls within the R.S. No.147/6 or 147/6 is already available before



the Trial Court and the same has been re-appreciated by the Appellate Court, after considering the same, instead of deciding the merits of the case, the lower Appellate Court has wrongly applied the provisions of Order 41 Rule 23-A of CPC and remanded the suit before the Trial Court, which is unwarranted. He further submitted that even though, the nature of suit relates to the title to the property, the major issue raised in the suit is the identification of the property. This identification of the property purchased by the plaintiff and also the properties in possession of the defendants 6 to 8, were also properly discussed and judgment has been passed by the Trial Court and the same was also re-considered but the Appellate Court failed to pass decree based on the evidence place on record instead it has remanded the case under Order 41 Rule 23-A of CPC, hence prays to set aside the Order of remand passed by the Appellate Court.

13. Per contra, the learned counsel appearing for the plaintiffs submitted that before the Trial Court, the plaintiffs have marked Exs.A.1 to A.16 and Exs.A.1 to A.3 are the title deeds relating to the plaintiff's properties. Ex.A.14 to A.16 were relating to properties in possession of private defendants. In the appeal, the appellants have produced all the title



deeds and other original settlement extracts of the larger extent of the land, which includes lands in R.S. No.147/6, 147/7 and the defendants also separately marked additional documents, since various documents touching the title of persons who were in possession of the properties, dates back from the year 1953 onwards, have been marked and it requires interpretation and proper evidence to identify its property. Hence to decide the title of each persons, adducing oral evidence is very much necessary. It is true that, the Appellate Court itself could have examined the witnesses since various documents have been produced, but the Appellate Court has decided to sent the matter to the Trial Court for deciding the issue afresh, hence prays to confirm the Order of the remand.

14. I have considered the submissions made on both sides and perused the materials on record.

15. The scope of remanding the matter by invoking Order 41 Rule 23-A is very much limited and for the reasons stated in the above provisions, the Order of remand could be passed. The section has been interpreted by the Apex Court recently in *Sirajudheen vs. Jeenath and others* [2023



LiveLaw (SC) 145] and observed as follows:

WEB COPY

“9.2. While explaining the scope of Rules 23 and 23-A of Order XLI CPC, in the case of Municipal Corporation, Hyderabad (supra), this Court has observed as under: -

“32. A distinction must be borne in mind between diverse powers of the appellate court to pass an order of remand. The scope of remand in terms of Order 41 Rule 23 is extremely limited. The suit was not decided on a preliminary issue. Order 41 Rule 23 was therefore not available. On what basis, the secondary evidence was allowed to be led is not clear. The High Court did not set aside the orders refusing to adduce secondary evidence.

33. Order 41 Rule 23-A of the Code of Civil Procedure is also not attracted. The High Court had not arrived at a finding that a retrial was necessary. The High Court again has not arrived at a finding that the decree is liable to be reversed. No case has been made out for invoking the jurisdiction of the Court under Order 41 Rule 23 of the Code.

34. An order of remand cannot be passed on ipse dixit of the court.....”

9.3. In the case of Sanjay Kumar Singh (supra) relied upon by the learned counsel for the respondent No. 1, this Court has observed as under: -

“7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the



conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.”

16. In **Arvind Kumar Jaiswal (D) THR. LR. vs. Devendra**

Prasad Jaiswal Varun [2023 Live Law (SC) 112], Apex Court re-iterated the scope of remand of the matters as follows:

“An order of remand prolongs and delays the litigation and hence, should not be passed unless the appellate court finds that a re-trial is required, or the evidence on record is not sufficient to dispose of the matter for reasons like lack of adequate opportunity of leading evidence to a party, where there had been no real trial of the dispute or there is no complete or effectual adjudication of the proceedings, and the party complaining has suffered material prejudice on that account. Where evidence has already been adduced and a decision can be rendered on appreciation of such evidence, an order of remand should not be passed remitting the matter to the lower court, even if the lower court has omitted to frame issue(s) and/or has failed to



WEB COPY



C.M.A. No. 299 of 2021

determine any question of fact, which, in the opinion of the appellate court, is essential. The first appellate court, if required, can also direct the trial court to record evidence and finding on a particular aspect/issue in terms of Rule 25 to Order XLI, which then can be taken on record for deciding the case by the appellate court.”

17. In this case, the lower Appellate Court has allowed additional evidences, more particularly, it has marked several documents on both sides and these documents were also appreciated and elaborate discussions made by the lower Appellate Court. In this case, the identity of the property is the main issue, to identify the property, various documents have been relied on by the plaintiff of the Appellate stage. After admitting the appeal by the Appellate Court, Exs.A.17 – A.30 were marked on the side of the appellant and Exs.B.2 and B.3 were marked on the side of the respondents. After appreciating the evidence, the Appellate Court has held that these additional documents, which were relied heavily on both sides, have not been produced before the Trial Court. Since, no supporting oral evidence has been adduced and no supporting documental evidence produced, the Appellate Court empowered to remand the matter for recording the additional evidences but instead of remanding the matter for additional evidences, the Appellate Court has chosen to set aside the decree and judgment passed by the Trial



Court and thereafter remanded the case for fresh disposal after recording additional evidence.

18. To set asiding the decree and judgment, the Appellate Court is bound to give valid reasons, whereas on perusal of entire judgment, it shows that the plaintiff has not produced sufficient documents before the Trial Court to prove his case that his portion of land is in possession of the private defendants. Since, no documents were marked in support of his case, the Trial Court has rightly dismissed the case of the plaintiff and only in the Appellate stage, the plaintiff has come forward with various documents to prove the boundaries and also to prove the possession of the defendants, who are living adjacent to his land.

19. The plaintiff case is that, he is able to get all the documents only at the Appellate stage and produced the same before the Appellate Court. While that being the case, setting aside the decree and judgment passed by the Trial Court, which is based on the evidence available is not proper. The Trial Court has taken a view that the appellant/ plaintiff has failed to prove his land boundaries and also the fact that he has purchased



the properties, which falls within the Survey No.147/6. Since the plaintiff has not proved his case, the Trial Court has rightly dismissed the suit and the Appellate Court has not found any reason to interfere with the finding, but only on the ground that additional evidences to be recorded, the lower Appellate Court has chosen to remand the matter by setting aside the decree and judgment of the Trial Court. This Court is of the view that the approach of the Appellate Court is not proper and the lower Appellate Court must have recorded the additional evidences of the parties by itself or it may sent the parties to record additional evidences before the Trial Court in the appeal without setting aside the decree and judgment of Trial Court.

20. Considering the fact that the additional documents already allowed to be marked at Appellate Court, oral evidence in support of the same shall also to be recorded by the Appellate Court. If the said exercise was done by the Appellate Court, it could have saved the delay in disposing of the dipute between the parties. The Appellate Court has remanded the matter to the Trial Court for adducing oral evidences of the parties by setting aside the decree and judgment of the Trial Court is not proper and the same is hereby set aside and the lower Appellate court is hereby directed to record



C.M.A. No. 299 of 2021

the additional evidence of the parties in both sides and thereafter pass the judgment and decree by itself.

21. In the result, this Civil Miscellaneous Appeal is allowed. The lower Appellate Court is directed to record additional oral evidence in support of additional documents already marked after providing sufficient opportunities to both sides, and dispose of the appeal as expeditiously as possible. Consequently, connected civil miscellaneous petition stands closed. No cost.

22.03.2024

stn
Index:Yes/No
Speaking Order:Yes/No
Neutral Citation Case: Yes/No

To:

1. The Secretary to Government,
Revenue Department,
Government of Puducherry,
Puducherry.
2. The Settlement Officer,
Directorate of Survey and Land Records,
Puducherry.

K. RAJASEKAR, J.



C.M.A. No. 299 of 2021

stn

WEB COPY

3. The Sub-Collector (North)
Saram, Puducherry.
4. The Tahsildar
Oulgaret Taluk,
Puducherry.
5. The Sub Registrar,
Oulgaret,
Puducherry.
6. The Section Officer,
V.R.Section,
High Court, Chennai.

C.M.A. No. 299 of 2021

22.03.2024