



C.M.A.No.215 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.215 of 2021

and

C.M.P. No.1458 of 2021

Ammachi (Died)

2. Angammal

3. Malar

4. Ramar

5. Thangamani *

.... Appellants

* Appellants 2 to 5 were brought on record
as LR's of the deceased sole Appellant,
vide Court order dt. 30.06.2023 in
CMP Nos.11929 to 11931 of 2022

VS.

1. Papathi

2. Nallathambi

3. Vijay

4. Minor Muthusamy

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the fair and decretal order in A.S. No.15 of 2015, dated 07.04.2016 on the file of the Subordinate Judge, Kallakurichi remanding the case to the trial court for fresh disposal.



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For Appellants
For Respondents

:Mr.N. Suresh
:Mr. S. Ramajayam

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JUDGMENT

This appeal has been filed challenging the judgment and decree of the Sub Court, Kallakurichi, dated 07.04.2016 passed in A.S. No.15 of 2015 remanding the matter for fresh consideration by the trial Court.

2. The 1st appellant (deceased) is the defendant in the suit O.S. No.75 of 2007, dated 11.12.2014 on the file of the District Munsif Court, Kallakurichi. The respondents are the plaintiffs in the said suit. The suit was filed for a bare injunction. The suit was decreed in favour of the respondents / plaintiffs. Aggrieved by the same, the 1st appellant / defendant preferred a first appeal before the Sub Court, Kallakurichi in A.S. No.15 of 2015.

3. By the impugned judgement and decree, the judgement and decree of the trial court, dated 11.12.2014 passed in O.S. No.75 of 2007 has been set aside and the matter has been remanded back to the trial Court for fresh consideration.



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4. Aggrieved by the said remand, the present appeal has been filed by the 1st appellant / defendant in the suit O.S. No.75 of 2007. During the pendency of this appeal, the 1st appellant died and his Legal Heirs were brought on record as appellants 2 to 5 in this appeal.

5. Heard Mr.N.Suresh, learned counsel for the appellants and Mr.S. Ramajayam, learned counsel for the respondents.

6. The reasons given for remand as seen from the impugned judgement and decree of the Lower Appellate Court is that the revenue records are not alone sufficient for the respondents / plaintiffs to prove their title and therefore, they will have to file a suit for declaration. Having not filed a suit for declaration, the Lower Appellate Court has held the suit filed by the respondents / plaintiffs for bare injunction against the 1st appellant / defendant is not maintainable. Admittedly, the respondents / plaintiffs have succeeded before the trial Court.

7. This Court also does not find any infirmity in the findings of the Lower Appellate Court, which is right in holding that the revenue records are alone not sufficient to prove the respondents / plaintiffs title as there



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is a cloud over the title of the property which is the subject matter of the dispute.

8. The Lower Appellate Court has granted liberty to the respondents / plaintiffs to seek for a declaratory relief and only after giving such a finding, the Lower Appellate Court has remanded the matter back to the trial Court for fresh consideration. Infact, the 1st appellant / defendant has questioned the title of the respondents / plaintiffs over the property as seen from the written statement filed by him before the trial Court. Necessarily, an effective adjudication of the suit can be given only if a declaratory relief is sought for by the respondents / plaintiffs. Liberty has also been granted to the respondents / plaintiffs to amend the prayer seeking for a declaratory relief. Instead of contesting the suit on merits once the matter is remanded, the 1st appellant has chosen to file this appeal, which in the considered view of this Court is not correct.

9. No prejudice would also be caused to the appellants, if the defences which they had already raised in the suit is allowed to be raised by them, once the matter is remanded back to the trial Court for fresh consideration. The appellants / defendants are also permitted to raise any



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other defence available to them under law, once the matter is remanded back to the trial Court. In the interest of justice, the only direction that can be issued by this Court is to direct the trial court to dispose of the suit preferably, within a specific time frame.

10. For the foregoing reasons, this Court does not find any merit in this appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11. However, a direction is issued to the trial Court i.e., District Munsif Court, Kallakurichi to dispose of the suit viz., O.S. No.75 of 2007, dated 11.12.2014, preferably, within a period of six months from the date of receipt of a copy of this judgement.

12. However, it is made clear that in case, the respondents / plaintiffs desire to amend the prayer to include the relief of declaration, the said application will have to be filed before the trial Court, within a period of two months from the date of receipt of a copy of this judgement.

04.04.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

ABDUL QUDDHOSE, J.



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vsi2

To

1. The Subordinate Judge,
Kallakurichi.
2. The District Munsif,
Kallakurichi.
3. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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