



C.M.A(MD)No.355 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.355 of 2017

and

C.M.P(MD)No.3893 of 2017

Ravichandran

... Appellant/Respondent/
Plaintiff

Vs.

Kumbakonam Municipality,
Represented by its Commissioner,
Dr.Murthy Road,
Kumbakonam.

... Respondent/ Appellant/
Defendant

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 u of Code of Civil Procedure, to call for the records and set aside the order of remand as per the judgment and decree, dated 21.11.2016 in A.S.No. 36 of 2014 on the file of the Additional District Court (Fast Track) Kumbakonam, reversing the judgment and decree, dated 20.12.2013 in O.S.No.130 of 2011 on the file of the Additional Sub Court, Kumbakonam.

For Appellant : Mr.H.Lakshmi Shankar

For Respondent : Mr.V.Panneer Selvam



C.M.A(MD)No.355 of 2017

JUDGMENT

WEB COPY

The present appeal has been filed by the respondent in A.S.No.36 of 2014 on the file of Additional District Court (Fast Track Court), Kumbakonam challenging the order of remand.

2. The appellant herein as plaintiff has filed O.S.No.130 of 2011 on the file of Additional Sub Court, Kumbakonam for the relief of declaration of title, permanent injunction, mandatory injunction and for declaration of 2 gift deeds as null and void. After trial, the suit was decreed as prayed for. The defendant-Municipality had filed A.S.No.36 of 2014 before the Additional District Court (Fast Track Court), Kumbakonam. Pending appeal, the appellant/defendant had filed I.A.No. 9 of 2016 to present 2 additional documents which are communications of the year 2007 and 2008 addressed to the plaintiff in order to show that the suit is barred by limitation. This application was allowed by the first appellate Court and had remitted the matter back to the trial Court for considering the suit on merits on the basis of the additional documents. Challenging the same, the present appeal has been filed.

3. According to the learned counsel appearing for the appellant, an order of remand cannot be passed merely because some documents are received as additional evidence before the appellate Court. The appellate



C.M.A(MD)/No.355 of 2017

Court has got powers to receive and mark those documents if they are found to be relevant and admissible for adjudication of the dispute.

Therefore, there is no necessity for remitting the matter back to the trial Court. Hence, he prayed for allowing the appeal.

4. Per contra, the learned counsel appearing for the respondent/defendant had contended that in case 2 documents are received as additional evidences, oral evidence has to be let in and therefore, for the said purpose, the order of remand passed by the first appellate Court may be sustained.

5. I have carefully considered the submissions made on either side and perused the material records.

6. A perusal of the order of the first appellate Court clearly reveals that without setting aside any one of the findings of the trial Court, it has remitted the matter back to the trial Court only on the ground that 2 documents have been presented as additional evidence by the appellants. It is settled position of law that an order of remand is not automatic merely because additional documents are marked before the first appellate Court. That apart, the documents cannot be received across the table and marked, but they have to be marked in a manner known to law.



C.M.A(MD)No.355 of 2017

Therefore, the order of remand is set aside and the matter is remitted back to the file of the first appellate Court with the following directions:

(i) The 2 additional documents that are proposed to be filed by the appellant / Municipality shall be marked after strictly following Order 41 Rule 28 by examining the concerned persons. The plaintiff shall be at liberty to cross-examine the said witness.

(ii) Based upon the said oral evidence and the existing oral and documentary evidence, the first appellate Court is directed to dispose of the matter on merits and in accordance with law.

(iii) The parties are directed to appear before the first appellate Court on **03.06.2024**.

7. With the said observations, this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

08.04.2024

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



C.M.A(MD)No.355 of 2017

To

WEB COPY

- 1.The Additional District Court (Fast Track),
Kumbakonam.
- 2.The Additional Sub Court,
Kumbakonam.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.355 of 2017

R.VIJAYAKUMAR,J.

gbg

Judgment made in
C.M.A(MD)No.355 of 2017

08.04.2024