



CMA.(MD)No.348 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 348 of 2024

and

CMP (MD) No. 4708 of 2024

Karuppannan : Appellant/Respondent/
Plaintiff

Vs.

1.Dharmalingam
2.Murugesan
3.Shanmugam
4.Thangarathinam
5.Arunachalam

: Respondents/Appellants/
Defendants

PRAYER:- Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(u) of the Civil Procedure Code to set aside the judgment and decree passed in AS No.26 of 2014, dated 20/09/2023 on the file of the Additional Sub Judge, Karur, reversing the judgment and decree passed in OS No.99 of 2010 on the file of the Principal District Munsif, Karar, dated 08/10/2013 and remanding the suit.

For Appellant : Mr.J.Sathiaraj

For Respondents : Mr.M.P.Senthil

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking an order to set aside the judgment and decree passed in AS No.26 of 2014, dated 20/09/2023 by the Additional Sub



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Judge, Karur, reversing the judgment and decree passed in OS No.99 of 2010 by the Principal District Munsif, Karur, dated 08/10/2013 and remanding the suit.

2.The facts in brief:-

Suit in OS No.99 of 2010 was filed by the appellant herein against the respondents and others, seeking a decree of permanent injunction with the following averments:-

The plaintiff encroached the property some 35 years ago. Ever-since, he is in possession and patta was issued in his favour. The plaintiff was also put a house and residing there. The defendants have no right in the property and tried to cause damage to the house on 26/02/2010. So, the suit is laid for permanent injunction.

3.That was resisted by the defendants by filing written statement stating that the plaintiff and his family members are living in Survey No.259/98 where a house is situated. The suit property is used as a cattle shed. The plaintiff encroached the pathway in natham poramboke area. Because of the encroachment made by the plaintiff, the defendants are not able to reach their



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lands. The plaintiff assured before the panchayat to remove the encroachment. Apart from that, the plaintiff encroached a portion of the property in Survey No.259/97 which belongs to them and put up a thatched shed and constructed a Toilet. They are initiating action for the removal of the encroachment. The plaintiff having pathway on the western side to reach his house.

4.Before the trial court, on the side of the plaintiff, 2 witnesses were examined and 3 documents were marked. On the side of the defendants, 4 witnesses were examined and 5 documents were marked. Apart from that, the Commissioner report and plan were marked as Ex.C1 and C2. Exs.X1 to X5 were marked through the witnesses.

5.On the basis of the pleadings of both sides, the trial court framed the following issues:-

(1).Whether the plaintiff is in possession and enjoyment of the suit property?

(2).Whether the Ex.P1 patta produced by the plaintiff is pertaining to the suit property?



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(3).Whether the suit property is a pathway as contended by the defendants?

(4).Whether the plaintiff encroached the pathway?

6.Finally, the trial court decreed the suit as prayed for with costs.

7.Against which, appeal was preferred by the defendants before the first appellate court namely the Additional Sub Judge, Karur in AS No.26 of 2014. The first appellate court, by judgment and decree, dated 20/09/2023 remanded the matter back to the trial court While setting aside the decree and judgment of the trial court allowed IA No.1 of 2022 filed by the appellants.

8.Against which, this appeal is preferred by the plaintiff as appellant.

9.Heard both sides.

10.The learned counsel appearing for the appellant would submit that during the course of the trial process, more than five times, the respondents filed written statement; there is a delay of eight years in disposing the appeal; The ground of remand is only to permit the



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respondents herein to lead evidence in respect of the additional documents produced; The delay in producing the documents is not properly explained before the appellate court.

11.Per contra, the learned counsel appearing for the respondents would submit that the appellate court has exercised the option of remanding the matter to the trial court for the purpose of recording evidence produced by them. Apart from that, it is also submitted that the trial court has not answered the Issue Nos.1 and 3 and the additional issue. An attempt was made by the respondents herein to transfer the suit, which is now pending on the file of the Additional District Munsif, Karur for joint trial along with OS No.99 of 2010, which is now pending on the file of the Principal District Munsif, Karur. So, according to the respondents, absolutely, there is no error in the order of remand passed by the appellate court.

12.Perusal of the records shows that Transfer OP No.5 of 2024 was filed on 01/01/2024 after the dismissal of the appeal, which is, dated 20/09/2023. On the basis of the subsequent development, the appeal itself can be disposed of. Pendency of the Transfer OP is not denied by the appellant herein.



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13.We will go the averments made in the Transfer OP filed during the pendency of AS No.26 of 2014, which is the subject matter of this appeal.

14.The suit was filed by the plaintiff namely the above Karuppannan in OS No.126 of 2019 on the file of the Additional District Munsif, Karur against the respondents herein for permanent injunction with regard to the very same subject matter of the suit in OS No.99 of 2010.

15.Further reading of the averments made in the petition shows that after the remand, since the subject matter is one and the same, the same may be tried by the very same court. How the suit was filed by the plaintiff herein for the very same subject matter of the present suit seeking the very same relief is not known. But however, considering the fact that a fresh suit is filed by the appellant herein for the very same subject matter. It is nothing, but both must be tried by the very same court. It is for the Principal District Judge, Karur to decide the above Transfer Original Petition as earlier as possible.

16.In the light of the above said observation, I am of the considered view that the remand order passed by the appellate court requires no interference.



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17.So, without going into the merits of the remand order, with the above said direction to the Principal District Judge, Karur, this Civil Miscellaneous Appeal is **dismissed**. No costs. Consequently connected Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The Principal District Judge,
Karur.
- 2.The Additional Sub Judge,
Karur.
- 3.The Principal District Munsif,
Karur
- 4.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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