



*C.M.A(MD)No.993 of 2018 &
C.R.P(MD)No.2350 of 2018*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.06.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.993 of 2018
and
C.R.P(MD)No.2350 of 2018
and
C.M.P(MD)No.10384 of 2018

C.M.A(MD)No.993 of 2018:

1.Soosaimary

2.Kasbar

3.Santhiyagu

4.Arockiasamy

5.Loordhumary

6.Josephmary

... Appellants/Respondents 1-6/
Plaintiffs

Vs.

Amalorpavam (Died)

1.John Bosco (Died)

2.Soosai Arul

3.Jeyaseeli

... Respondents/Appellants/



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Defendants
... Respondent/7th Respondent/
Plaintiff

4.Xavier

5.Yugin Loordu Mary

6.Joe Paulines John

7.Praveen

8.Britto Micheal Pragasam ... Proposed Respondents

*(R5 to R8 are impleaded as legal heirs of deceased R1 vide
Court order, dated 10.01.2019 in C.M.P(MD)No.11763 of 2018.)*

Prayer: Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of Code of Civil Procedure, to set aside the order of remand of the judgment and decree passed in A.S.No.5 of 2015 on the file of the Sub Court, Paramakudi, dated 26.07.2018 reversing the judgment and decree in O.S.No.20 of 2013 on the file of the District Munsif Court, Paramakudi, dated 09.12.2014.

For Appellants : Mr.D.Senthil

For R4 : No Appearance

For R5-R8 : Mr.J.Barathan

C.R.P(MD)No.2350 of 2018:

1.Soosaimary

2.Kasbar



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3.Santhiyagu

4.Arockiasamy

5.Loordhumary

6.Josephmary

... Petitioners/Respondents 1-6/
Respondents

Vs.

Amalorpavam (Died)

1.John Bosco (Died)

2.Soosai Arul

3.Jeyaseeli

... Respondents/Petitioners/
Appellants

4.Xavier

... Respondent/7th Respondent/
7th Respondent

5.Yugin Loordu Mary

6.Joe Paulines John

7.Praveen

8.Britto Micheal Pragasam

... Proposed Respondents

(R5 to R8 are impleaded as legal heirs of deceased R1 vide Court order, dated 19.03.2019 in C.M.P(MD)No.300 of 2019)

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 26.07.2018 made in I.A.No.4 of 2016 in A.S.No.5 of 2015 on the file of the Sub Court,



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Paramakudi.

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For Petitioners : Mr.D.Senthil
For R4 : No Appearance
For R5-R8 : Mr.J.Barathan

COMMON ORDER

The plaintiff in O.S.No.20 of 2013 has filed the present civil miscellaneous appeal challenging an order of remand passed in A.S.No.5 of 2015 on the file of the Sub Court, Paramakudi.

2. The appellants herein as plaintiffs had filed the above suit for the relief of declaration of title and permanent injunction. After trial, the suit was decreed as prayed for on 09.12.2014. The defendants had filed A.S.No.5 of 2015 on the file of Sub Court, Paramakudi. Pending appeal, the defendants had filed I.A.No.4 of 2016 under Order 41 Rule 27 of Code of Civil Procedure to receive two documents as additional evidence. A perusal of the said petition indicates that these two documents have been received by the defendants after the disposal of the suit.



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3. The trial Court had independently allowed I.A.No.4 of 2016 on 04.12.2017. Challenging the same, the plaintiffs had filed C.R.P(MD)No. 2585 of 2017 before this Court. This Court by an order, dated 05.03.2018 has allowed the revision petition with a direction to the first appellate Court to hear and pass orders in I.A.No.4 of 2016 along with the main appeal. Thereafter, at the time of hearing the main appeal, the first appellate Court felt that these two documents would have some relevance to the present suit and they are required for the disposal of the appeal. It has proceeded to allow I.A.No.4 of 2016. Since the said application for receiving additional evidences has been allowed, the first appellate Court had remitted the matter back to the trial Court for considering the issue afresh in the light of the additional evidence. The order of remand is challenged in C.M.A(MD)No.993 of 2018 and the order in I.A.No.4 of 2016 is challenged in C.R.P(MD)No.2350 of 2018.

4. According to the learned counsel appearing for the plaintiffs / appellants, the first appellate Court ought not to have received the additional documents without receiving any oral evidence. In that regard, the documents ought not to have been received across the Bar. He further contended that when the relevance and admissibility of the documents



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are in dispute, the same should not have been admitted as evidence. He further challenged the order of remand on the ground that merely because two documents were received as additional evidence, the appellate Court ought not to have remitted the matter back to the trial Court and it should have decided the suit by itself.

5. Per contra, the learned counsel appearing for the respondents in the appeal as well as in the revision petition had contended that the suit is one for declaration of title and permanent injunction and the present documents which are placed before the Court as additional evidence are SLR copies and therefore, they have got great relevance to the disposal of the present suit. These two documents would prove that the plaintiffs do not have any title or possession over the suit schedule properties. When these two documents are permitted to be received as additional evidence, naturally for letting any oral evidence on behalf of the defendants as well as for letting in contra evidence on behalf of the plaintiffs, the suit has to be remitted back to the trial Court. Therefore, the order of remand passed by the first appellate Court as well as the order allowing additional evidence may be sustained.



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

7. The facts captured above will clearly indicate that the unsuccessful defendants have filed two documents before the first appellate Court for receiving the same as additional evidence under Order 41 Rule 27 of Code of Civil Procedure. The first appellate Court has held that these two documents are necessary for proper adjudication of the suit. However, the first appellate Court has proceeded to receive those documents across the Bar without any oral evidence or following the procedure as contemplated under Order 41 Rule 28 of Code of Civil Procedure. Therefore, this Court is of the view that the order passed in I.A.No.4 of 2016 is not sustainable in law and it is liable to be set aside. However, a perusal of those two documents would reveal that they might have got some relevance for the disposal of the suit. This Court has interfered in the order in I.A.No.4 of 2016 only on the ground of procedural irregularity and not on the ground of merits.

8. Since these two documents have got relevance for the disposal of the suit, the plaintiffs as well as the defendants should be given an



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opportunity to let in oral and contra documentary evidence to rebut the same. For the said purposes, the first appellate Court has rightly remitted the matter back to the trial Court.

9. In view of the above said facts, this Court is inclined to pass the following orders:

(i) The order of remand passed in A.S.No.5 of 2015 on 26.07.2018 hereby stands confirmed.

(ii) The order passed in I.A.No.4 of 2016 on 26.07.2018 is hereby set aside. However, the defendants are permitted to place these documents before the trial Court by letting any oral evidence.

(iii) The plaintiffs are permitted to let in oral or documentary evidence contradicting the additional documents filed by the defendants.

(iv) The suit shall be disposed off within a period of six (6) months from the date of receipt of copy of this order.

10. With the above said observations, this Civil Miscellaneous Appeal stands dismissed and the Civil Revision Petition stands allowed.



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No costs. Consequently, connected Civil Miscellaneous Petition is closed.

03.06.2024

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

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To

- 1.The Sub Court,
Paramakudi.
- 2.The District Munsif Court,
Paramakudi.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Order made in
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