



C.M.A(MD).No.628 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD).No.628 of 2018

and

C.M.P.(MD)No.7373 of 2018

1.Tiruchendur 14 Oor Sengundha Mudaliar
Uravin Murai Abhivridhi Sangam,
through its President, Balakrishnan.

2.Tiruchendur 14 Oor Sengundha Mudaliar
Uravin Murai Abhivridhi Sangam,
through its Secretary, Ayyanar.

3.Tiruchendur 14 Oor Sengundha Mudaliar
Uravin Murai Abhivridhi Sangam,
through its Treasurer, Mariappan.

....Appellants/Respondents/Plaintiffs

vs

Balan

... Respondent/Appellant/Defendant

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of Civil Procedure Code, as against the order of remand made by Sub-Court, Tiruchendur through its judgment and decree dated 04.09.2017 in A.S.No. 157 of 2017 in reversing the judgment and decree dated 30.09.2013 in O.S.No.181 of 2010, on the file of District Munsif Court, Tiruchendur.



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For Appellants : Mr.F.X.Eugene

For Respondent : Mrs.P.Jessi Jeeva Priya

JUDGMENT

The plaintiffs in O.S.No.181 of 2010, on the file of District Munsif Court, Tiruchendur are the appellants herein. The appellants herein who are registered societies have filed the above said suit for the relief of evicting the tenant, namely, defendant and for recovering a sum of Rs.4,000/- (Rupees Four Thousand only) towards rental arrears and for mesne profits.

2. The said society had already filed R.C.O.P.No.22 of 1991 before the District Munsif Court, Srivaikundam and the same was allowed with respect to some other properties. The trial Court arrived at a finding that the appellants' society is a registered society and it is a charitable one and Rent Control Act is not applicable to the appellant society and proceeded to hold that the suit is maintainable and thereafter, proceeded to pass an order of eviction as against the tenant.



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3. Challenging the same, the defendant had filed A.S.No.157 of 2017 before the Sub Court, Tiruchendur. Along with the appeal, the defendants have filed I.A.No.59 of 2017 to receive the suit register in R.C.O.P.No.22 of 1991. The first appellate Court had arrived at a finding that the trial Court has not considered whether the plaintiff society is a charitable society or not. Since the trial Court has not arrived at a finding, the first appellate Court has reversed the findings of the trial Court on the ground that maintainability of the suit has not been decided and had remanded back the matter to the trial Court, which order of the remand is under challenge in the present appeal.

4. According to the learned Counsel appearing for the appellant, if the judgment and decree of the trial Court is erroneous, it is for the first appellate Court to re-appreciate the same and arrive at a different finding. The first appellate Court, in fact, had dismissed the Interlocutory Application filed under Order 41 Rule 27 C.P.C. and thereafter, ought not to have set aside the finding of the trial Court and remitted the matter back to the trial Court.



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5. Per contra, the learned counsel appearing for the respondent/defendant has contended that unless the plaintiff establishes the fact that the plaintiff's society is a public charitable society, the suit would not be maintainable. Since the said issue is not decided by the trial Court, the first appellate Court had remitted the matter back to the trial Court.

6. This Court carefully considered the submissions made on either side and perused the materials available on record.

7. The trial Court has arrived at a specific finding that the Rent Control Act is not applicable to the plaintiff's society and has proceeded to hold that the suit is maintainable.

8. In case, the first appellate Court finds that the plaintiff's society is not a charitable society, it is for the first appellate Court to arrive at an independent finding after hearing both the parties. For arriving at a particular finding, the suit cannot be remitted back to the trial Court, especially, after dismissing an application under Order 41 Rule 27 C.P.C.



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Therefore, the order of remand passed by the first appellate Court is hereby set aside. The matter is remitted back to the file of the Sub Court, Tiruchendur, for considering the appeal afresh. It is open to the first appellate Court to re-appreciate the oral evidence that had already been given by both the parties including the issue relating to maintainability of the suit.

9. The parties are directed to appear before the first appellate Court on **24.06.2024**. The first appellate Court is directed to dispose of the appeal on or before **31.12.2024**.

10. With the above said observations, this Civil Miscellaneous Appeal stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

23.04.2024

Internet: Yes/No
Index: Yes/No
RJR

To
The District Munsif Court, Tiruchendur.

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R.VIJAYAKUMAR, J.

RJR

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