



WEB COPY

CMA No. 889 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-06-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 889 of 2023 & CMA NO. 936 OF 2023

AND

CMP NO. 8250 OF 2023 & CMP NO. 8583 OF 2023

J.Kandasamy

Appellant in both
C.M.A.s

Vs

1. A.Seerajunisha @ Suganya

2.A.Senthilkumar

Respondents in both
C.M.A.s

CMA No. 889 of 2023

PRAYER:-Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of Civil Procedure Code, praying to set aside the judgment and decree of the Principal District Judge, Erode in AS No.44 of 2019 dated 31.01.2023 reversing the Judgment and Decree passed by the II Additional Sub court, Erode in OS No.146 of 2012 dated 25.01.2019 and remanding the case to the trial court



CMA No. 936 of 2023

WEB COPY

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of Civil Procedure Code, praying to set aside the Judgment and Decree of the Principal District Judge, Erode in AS No.45/2019 dt. 31.01.2023 reversing the Judgment and decree passed by the II Additional Sub Court, Erode in OS No.26/2017 dt. 25.01.2019 and remanding the case to the trial court

For Appellant in Mr.S. Kaithamalai Kumaran
both C.M.A.s:

For Respondents in Mr J.Titus Enock For R1
both C.M.A.s: R2 - Exparte

JUDGMENT

Challenging the impugned orders of remand passed in A.S.Nos.44 and 45 of 2019 dated 31.01.2023 respectively reversing the judgment and decree passed by II Addl. Sub-Court, Erode in O.S.Nos.146 of 2012 and 26 of 2017 dated 25.01.2019 respectively, the appellant preferred these Civil Miscellaneous Appeals.



WEB COPY

2. The learned counsel for appellant argues that the first appellate judge has committed an error in making order of remand to the trial court for fresh consideration by recasting the issue without taking note of the fact that already all those issues were framed by the trial court and the same were decided by the trial judge by considering the evidence on record. Therefore, the orders of remand is unwarranted and prayed to set aside the findings of first appellate judge.

3. The learned counsel for 1st respondent argues that at the time of arguments, before the first appellate court, the 1st defendant has submitted the defence, considering the same, the first appellate judge has recasted the issue as such is justifiable one, which needs no interference.

4. Considering both side submissions and on perusal of records, before the trial court, the trial judge has framed eight issues and on hearing both sides, and considering the evidence, the suits were decreed and the same were challenged by 1st respondent before the first appellate court in A.S.Nos.44 & 45 of 2019 on the file of Principal District Judge, Erode. At the time of argument,



WEB COPY

the learned judge has held that the issues ought to have been recasted and he had also recasted the issues with a direction to remand back the matters to the trial court for fresh consideration. But, on considering the issues framed by the first appellate judge, it is ascertained that those are one and the same and all the recasted issues framed by the learned judge was already decided. Considering the defence of 1st defendant, the first appellate judge recasted the issue “whether the power of attorney and suit sale agreement are executed only for the purpose of loan transaction?” Issues recasted to prove those aspects. But on considering the issues framed by the trial court, the fourth issue framed by the trial judge is also one and the same. Therefore, already those issues were framed and to that effect, the evidence also adduced and the same has also been considered by the trial judge on merits. For remanding back the matters to the trial court to decide the same issue is unwarranted one as rightly pointed out by the learned counsel for appellant. Therefore, the orders of remand made by the first appellate court in A.S.Nos.44 and 45 of 2019 are set aside and the first appellate judge is directed to decide the appeal on merits without influence of earlier observation made by the first appellate judge.



5. With the aforesaid observation, these Civil Miscellaneous Appeals are disposed of. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

WEB COPY

23-06-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

rpp

To

1. Principal District Judge, Erode.

2. II Addl. Sub-Court, Erode.

3. Section Officer, VR Section, Madras High Court.



WEB COPY

CMA No. 889 of 2023





WEB COPY

CMA No. 889 of 2023



T.V.THAMILSELVI J.

rpp

**CMA Nos. 889 & 936 of
2023
AND CMP NOS. 8250 &
8583 OF 2023**

23-06-2025