



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2026

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 548 of 2020

1. M.Albin Reena
W/o Late Arul Raj, No.17/1, 4th Cross
Ra Road, Equipura, Bangalore and
another

2.V.Michael Jose
S/o Varuvel, No.18/64 Kottavilakathy
Puthan Veedu, Munuzhi, Neyyur Post,
Thalakulam Tk, Kanyakumari District

Appellant(s)

Vs

1. Venkatachalam
S/o Rangasamy Naidu, No.1/48
Lakshmi Narayanan Nagar, No.1/48
Lakshmi Narayanan Nagar, Eswar
Nagaram, Hosur Town And Post, Hosur
Tk, Krishnagiri District

2.Muni Reddy
S/o Late Thimmareddy, Mookandapalli
Village, Sipcot Post, Hosur(tk) 635126

3.Kamalammal
W/o Munireddy, Mookandapalli
Village, Sipcot Post, Hosur
(tk)-635126

4.Manjunatha Reddy
S/o Munireddy, Mookandapalli
Village, Sipcot Post, Hosur
(tk)-635126



5.Amaravathy
D/o Munireddy, Mookandapalli
Village, Sipcot Post, Hosur
(tk)-635126

6.Sudha
D/o Munireddy, Mookandapalli
Village, Sipcot Post, Hosur
(tk)-635126

7.Geetha
W/o Narasimman, No.1/125
O.No.1/158, Mookandapalli Village,
Sipcot Post, Hosur Tk-635126

8.Selvaraj(died)
S/o Devadas, Hig-49 10th Phase,
Rayakottai Road, Housing Board,
Hosur Town And Post, Hosur
Tk-635126

9.Duraiarumugam
S/o Duraisamy, No.785/1 Ananda
Nagar, (behind Titan Watches), Sipcot
Post, Hosur Tk-635126

10.S.Felix Meshac Selvaraj
No.C-304, Purva Sunshine Apartments,
Sarjapur main Road, Kaikondrahalli,
Opp.Kaikondrahali Lake, Bangalore
South, Bangalore 560035 Respondent-8
Died. Respondent-10 brought on record
as LR's of the deceased R-8 Viz.Selvaraj
vide court order dated 03/02/2023 made
in CMP Nos.21959,21962 and 21964 of
2022 in CMA No.548 of 2020 by
TKRJ.

Respondent(s)



CMA No. 548 of 2020

PRAYER

To set aside the Judgment and Decree and order of remand made in AS No. 11/2014 dated 15/11/2019 on the file of the Additional Subordinate Court, Hosur which set aside the Judgment and Decree passed in OS No. 240/2008 dated 20/01/2012 by the District Munsif Court, Hosur and to allow the above appeal.

CMA No. 548 of 2020

For Appellant(s): Mrs.Chitra Sampath Senior
Counsel For Mr.S. Parthasarathy

For Respondent(s): Mrs.Hema Sampath Senior
Counsel For Mr.N.Umapathi For
R1 Grounds Due Rr2 To 6, 9,
10 R7-bed Returned R8 - Died

JUDGEMENT

This Civil Miscellaneous Appeal has been filed seeking to set aside the Judgment and Decree and order of remand made in AS No. 11/2014 dated 15/11/2019 on the file of the Additional Subordinate Court, Hosur which set aside the Judgment and Decree passed in OS No. 240/2008 dated 20/01/2012 by the District Munsif Court, Hosur and to allow the above appeal.

2. The brief facts of the case:

The appellants herein filed a suit in OS No. 240 of 2008 on the file of the District Munsif, Hosur, for the relief of declaration and other consequential relief in respect of 'A' and 'B' schedule properties as described in the plaint schedule. Out of 9 defendants, the defendants 3 to 5 alone filed the written statement. The defendants 3 to 5, 7 & 8 appeared through counsel.



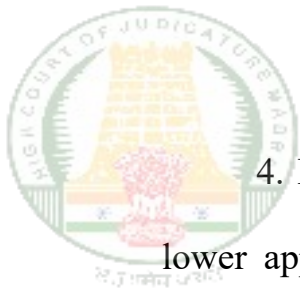
2.1. On hearing both sides, the Trial Court framed issues and both side parties adduced oral and documentary evidence. On considering the oral and documentary evidence on record, the Trial Court held that plaintiffs proved the title of their vendor and themselves and they are rightful owner of the suit property. Accordingly, granted declaratory relief in respect of 'A' and 'B' schedule properties in favour of the plaintiffs as prayed for.

3. Challenging the same, 8th defendant preferred an appeal before the Additional Sub Court, Hosur, in A.S No. 11 of 2014, on the ground that the Trial Court neither framed issues properly nor answered the possession of the property, which is in the hands of 8th defendant, who purchased the suit property in the year 2007 from one Marimuthu, Vijayan and Katturaja. Ever since, the 8th defendant is in possession of the suit property but Tahsildar wrongly issued patta in favour of the plaintiff by including his property, against which, he preferred an appeal before Sub Collector, Hosur. After verifying the records, the Sub Collector cancelled the patta. Against which, the plaintiffs preferred an appeal before District Revenue Officer, who confirmed the order of the Sub Collector. However, by suppressing all the facts, the plaintiffs come forward with suit as if 1st defendant executed sale deed in favour of 6th defendant, as power agent of defendants 2 to 5, from the 6th defendant, the plaintiffs purchased the suit properties. The plaintiffs also not proved the case with proper



documents more particularly, with regard to suit properties. The appellant was not aware of the exparte order passed against him. Immediately, on came to know about the exparte decree, he come forward with the appeal. Considering the submission of 8th defendant, the first appellate judge held that proper opportunity was not given to him, since he had purchased the property long back in the year 2007. In order to give one more opportunity to 8th defendant, the first appellate Court set aside the findings of the Trial Court and remitted the matter back to Trial Court for fresh disposal and directed the Trial Court to issue summons to the parties and also permitted the appellant to file written statement, additional evidence, if any and to frame relevant additional issues. Aggrieved over the same, the plaintiff preferred this Civil Miscellaneous Appeal.

3.1. The learned counsel for the plaintiff argued that the first appellate Court failed to take note of the fact that there is no legal infirmity or flaws in the judgment and decree of the Trial Court which does not warrant reconsideration or remand of the suit to the Trial Court. Further, it is pointed out that the first appellate Court ought not to have exercised its powers to remand back the suit and commissions and omissions could be corrected by the first appellate Court itself and it can ascertain the facts by getting report from the Trial Court under Order 41 Rule 23 CPC.

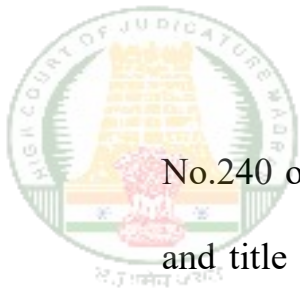


4. Further the learned counsel submitted that the reason assigned by the lower appellate Court to order the remand the suit to trial is to provide an opportunity to the first respondent/8th defendant and it cannot be taken as reason for retrial and powers of remand is extremely limited. The lower appellate court ought to have appreciated the fact that the defects, infirmities in the judgment of the Trial Court cannot be a ground to order a remand and the remand will arise only when the court arrived at a clear findings that the judgment of the Trial Court is not supported by evidences.

5. The order of remand should not be made mechanically in ordinary circumstances, but it has to be exercised sparingly. Hence, she prays to dismiss the judgment passed by the first appellate Court.

6. By way of reply, the learned counsel for the respondents submitted that patta granted in favour of the plaintiffs in respect of suit property was cancelled by the Sub Collector, Hosur, based on the appeal filed by the 8th defendant. The defendants 2 to 5 are also disputing the power of attorney stating that it is forged one. More particularly, 8th defendant remained exparte who is holding title deed in respect of suit property based on the sale deed of the year 2007. Therefore, the Court below rightly remanded the matter back to the Trial Court for fresh disposal, as such, is sustainable. Hence, he prayed to dismiss this Civil Miscellaneous Appeal.

7. Heard both sides submissions on either side and perused the material available on record. The fact reveals that the plaintiff/appellant filed a suit in OS



No.240 of 2008 on the file of the District Munsif Court, Hosur, claiming right and title over 'A' and 'B' schedule properties. The defendants 3 to 5 filed the written statement disputing the alleged power of attorney relied on by the plaintiff, stating that it is forged one and they have not given power in favour of first defendant as alleged by the plaintiff. Based on the power of attorney, the first defendant sold the suit properties to sixth defendant/Geetha. From the sixth defendant, 1st plaintiff has purchased 'B' schedule property and 2nd plaintiff has purchased 'A' schedule property on 19.09.2005. Ever since, they were in possession and enjoyment of the suit property. On the other hand, 8th defendant preferred the first appeal stating that he purchased the suit property in the year 2007 from one Marimuthu, Vijayan and Katturaja. Ever since, he is possession and enjoyment of the suit properties. While so, the plaintiffs obtained patta including 8th defendant property and the same was subsequently cancelled as per order of Sub Collector, Hosur and same was confirmed by the District Revenue Officer. Therefore, both properties claiming right and title over the property.

8. Admittedly, before the Trial Court, 8th defendant not contested the suit. Defendants 3 to 5 alone contested the suit and defendants 1 & 2 alone examined as witnesses. But the Trial Judge relying on the evidence of plaintiffs, granted relief. Hence, the First appellate judge rightly set aside the same to give fair opportunity to 8th defendant who is also claiming right and title over the property which requires detailed evidence. If opportunity is not given, his valuable right to protect his property will be defeated. Therefore, the order



passed by the first appellate judge requires no interference. The findings of the first appellate Court is confirmed. CMA is dismissed. Since, the suit is of the year 2008, the Trial Court is directed to dispose of the suit in OS No. 240 of 2008, by giving fair opportunity to both parties within a period of six months from the date of receipt of a copy of this judgment. No costs.

02.03.2026

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The District Munsif Court, Hosur.
2. The Additional Subordinate Court, Hosur.
3. The Section officer, V. R Section, High Court, Madras.



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T.V.THAMILSELVI J.
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