



C.M.A.(MD)Nos.2041 and 2042 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.04.2026

PRONOUNCED ON: 19.06.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)Nos.2041 and 2042 of 2013

C.M.A(MD)No.2041 of 2013:

Vadivel : Appellant/1st Respondent/
1st Defendant

Vs.

1.K.Alangulam Panchayat : 1st Respondent/Appellant/Plaintiff

2.The Assistant Commissioner,
Land Reforms Department,
Murugankuruchi,
Palayamkottai,
Tirunelveli, Tirunelveli District.: 2nd Respondents / 2nd Respondent/
2nd Defendant

PRAYER:- Civil Miscellaneous Appeal is filed under Order 43 Rule (1) (U) C.P.C., against the judgment and decree order passed in A.S.No.90 of 2011, on the file of the Subordinate Court, Sankarankovil, dated 29.08.2013, remanding the judgment and decree in O.S.No.305 of 2008, on the file of the Additional District Munsif Court, Sankarankovil, dated 23.08.2011.



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For Appellant : Mr.S.Meenakshi Sundaram

Senior Counsel
for Mr.R.T.Arivukumar

For Respondents :Ms.S.Mamtha

for R.1

: Mr.R.Raghavendran
Government Advocate
(Civil Side), for R.2

C.M.A(MD)No.2042 of 2013:

V.Samuthiram : Appellant/3rd Respondent /
3rd Defendant

Vs.

1.K.Alangulam Panchayat
through its President Kannan,
Kuruvikulam Union,
Sankarankovil Taluk,
Tirunelveli District.

: 1st Respondent/Appellant/Plaintiff

2.M.Sivan

3.S.Kadarkarai

: Respondents 2&3 / Respondents 1&2/
Defendants 1 & 2

PRAYER:- Civil Miscellaneous Appeal is filed under Order 43 Rule (1) (U) C.P.C., against the judgment and decree order passed in A.S.No.94 of 2011, on the file of the Subordinate Court, Sankarankovil, dated 29.08.2013, remanding the judgment and decree in O.S.No.350 of 2008, on the file of the Additional District Munsif Court, Sankarankovil, dated 23.08.2011.



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For Appellant : Mr.V.Meenakshi Sundaram
Mr.R.T.Arivukumar

For Respondents :Ms.S.Mamtha
for R.1

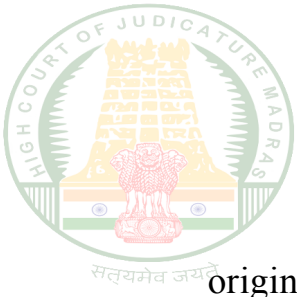
:R.2 and R.3 - Exparte

COMMON ORDER

These Civil Miscellaneous Appeals are directed against the common judgment and decrees made in A.S.Nos.90 of 2011 and 94 of 2011, dated 29.08.2013, on the file of the Subordinate Court, Sankarankovil, reversing the common judgment and decrees made in O.S.Nos.305 of 2008 and 350 of 2008, dated 23.08,2011, on the file of the Additional District Munsif Court, Sankarankovil and remitting the matter back to the trial Court.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. K.Alangulam Panchayat through its President filed two suits in O.S.Nos.305 of 2008 and 350 of 2008 claiming permanent injunction. The case of the plaintiff in both the suits is that the suit property

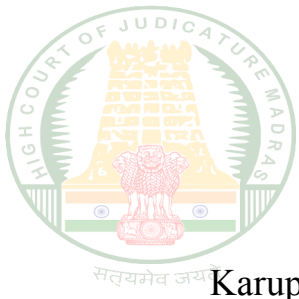


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originally belonged to the Government and subsequent to the introduction of the Land Reforms scheme, the suit property was assigned in favour of one Karuppasamy on 28.01.1976 by the Government, who in turn after enjoying the property, gifted the same to the Alangulam Village Panchayat for the welfare of the village people on 24.06.2008, that the plaintiff Panchayat accepting the gift has been in possession and enjoyment of the suit property, that when the plaintiff attempted to maintain the property for the purpose of laying playground and garden for the village people, the defendants interfered with the maintenance work and prevented them from carrying out the said work and that therefore, the plaintiff panchayat was constrained to file the above suits.

4. The suit in O.S.No.305 of 2008 was filed only against one Vadivel and subsequently, the Assistant Commissioner, Land Reforms Department, Tirunelveli came to be impleaded as the second defendant. The suit in O.S.No.350 of 2008 was filed against the three defendants including the wife of the said Vadivel – first defendant in O.S.No.305 of 2008. Since the first defendant was in abroad, his wife defended the suit in O.S.No.305 of 2008 as Power Agent and filed the written statement cum counter claim alleging that the assignment given to the said



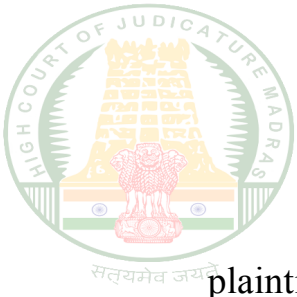
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Karuppasamy by the Government was taken back by the Government, that subsequently the Government vide notifications conveyed an extent of 1.53 Acres of land in Survey No.67/1 (New Sub division 67/1A2) in favour of the defendant Vadivel and the remaining land was conveyed to Mariappan and Karuppasamy, that since the defendant Vadivel is in abroad, his wife – third defendant in O.S.No.350 of 2008 has been carrying out the agricultural work, that the plaintiff and their predecessors in title are not having any right, interest or title over the suit property and that the defendant Vadivel is entitled to get a declaration that the suit property consisting of 1.53 Acres in new sub division No.67/1A2 belongs to him and for consequential permanent injunction.

5. The defendants 1 and 2 in O.S.No.350 of 2008 had remained exparte.

6. The learned trial Judge, after framing necessary issues conducted a joint trial and passed a common judgment dated 23.08,2011 dismissing both the suits and allowing the counter claim in O.S.No.305 of 2008. Aggrieved by the said common judgment and decrees, the

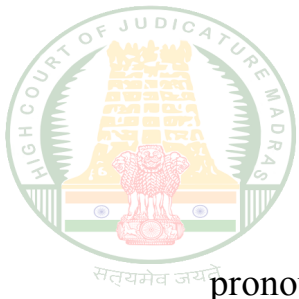


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plaintiff Panchayat preferred appeals in A.S.Nos.90 of 2011 and 94 of 2011 and the learned Subordinate Judge, Sankarankovil, considering the materials available on record and on hearing the arguments of both sides, passed the impugned common judgment and decrees dated 29.08.2013, allowing the appeals and thereby setting aside the common judgment and decrees of the trial Court and remanded the matter back to the trial Court. Challenging the order for remand, the first defendant Vadivelu in O.S.No. 305 of 2008 and the third defendant in O.S.No.350 of 2008 filed the present Civil Miscellaneous Appeals.

7. It is pertinent to note that the first appellate Court remanded the matter mainly on the ground that no opportunity had been granted to the plaintiff to file a reply statement to the counter claim and that no further opportunity to adduce evidence had been afforded after framing additional issues relating to the counter claim. No doubt, the learned Ist Appellate Judge referred to Order 8 Rule 6A C.P.C., which deals with counter claims. It is relevant to mention that under Order 8 Rule 6A(4) C.P.C., a counter claim is to be treated as a plaint and governed by the rules applicable to plaints. The said provision contemplates that a counter claim is to be treated as a cross suit so as to enable the Court to



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pronounce a final judgment in the same suit, both the original claim and the counter claim. Moreover Rule 6A(3) stipulates that the plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the Court. The main objection of the plaintiff is that after filing of the written statement cum counter claim by the first defendant, the trial Court has not afforded any opportunity to file a reply statement in response to the counter claim of the defendant and the trial Court considering the above provisions and taking note of the fact that the trial Court had not specifically granted any time for filing of the reply statement, sustained the above objections of the plaintiff.

8. The next contention of the plaintiff is that the trial Court invoking Order 14 Rule 5 C.P.C., framed additional issues with regard to the counter claim, but no opportunity was provided to the plaintiff for adducing further evidence in that regard. The first appellate Court by observing that the trial Court without disclosing the new issues framed and without giving opportunity to lead evidence on additional issues, pronounced the judgment and that since the trial Court has not given opportunity to lead the evidence in respect of additional issues, the



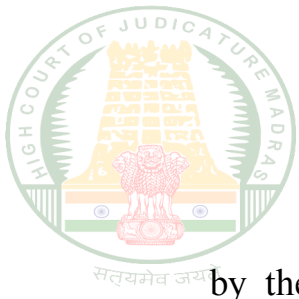
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matter has to be remanded back to the trial Court for granting sufficient opportunity to lead evidence.

9. It is pertinent to mention that the suit in O.S.No.305 of 2008 was filed on 21.01.2008. The original defendant Vadivel represented by his power agent filed the written statement cum counter claim on 13.04.2009 and issues were framed on 09.03.2010. Both parties filed a memo seeking joint trial and the same came to be recorded on 12.04.2010. The trial was commenced and P.W.1 was examined on 15.04.2010 and subsequently, P.W.2 was examined on 20.10.2010. It is further evident through the judgment of the first appellate Court that the trial Court raised a query as to whether the defendant – Vadivel has paid the requisite Court fee for the counter claim. Upon being satisfied that the necessary Court fee had been paid, posted the matter for check and call on 26.11.2010. Thereafter an amendment petition was filed and the same was allowed and in pursuance of the same, the second defendant has been impleaded.

10. It is further evident that the second defendant filed a memo dated 11.01.2011 stating that they are adopting the written statement filed



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by the first defendant. Thereafter, the trial was proceeded and after hearing the arguments of both sides, the judgment came to be pronounced on 23.08,2011. As rightly pointed out by the learned Counsel for the defendant, the plaintiff had sufficient notice regarding the counter claim and actively participated in the trial proceedings without raising any objection or seeking time either to file a reply statement or to adduce additional evidence in that regard.

11. A perusal of the records would disclose that the parties had gone to trial fully knowing of their respective pleadings and rival claims, including the reliefs of declaration and permanent injunction sought in the counter claim. As already pointed out, a joint trial was conducted and evidence had been adduced by both parties and that the suits as well as the counter claim were disposed of by a common judgment on merits. More importantly, the learned First Appellate Judge has not indicated as to what specific plea the plaintiff was prevented from raising, what evidence the plaintiff was unable to adduce, or in what manner any prejudice had been caused so as to vitiate the trial merely on account of the non-filing of a reply statement to the counter claim.



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12. As already pointed out, it is trite that a counter claim under Order 8 Rule 6A(4) C.P.C, is to be treated as a cross suit, but it is also well settled that the procedural irregularities unless shown to have occasioned failure of justice, cannot by themselves furnish a ground for setting aside a decree after completion of full trial.

13. Now turning to the next objection, it is pertinent to note that the learned trial Judge has specifically observed that the additional issues were framed invoking Order 14 Rule 5 C.P.C. The said provision expressly empowers the Courts at any point before passing a decree to amend the issues or frame additional issues as may be necessary for determining the matters in controversy between the parties. The object of the said provision is to secure complete and effective adjudication of the disputes and to avoid multiplicity of proceedings.

14. In the case on hand, the trial Court has framed two additional issues which are extracted hereunder for better appreciation:

(i) As per the counter claim, whether the defendant is entitled to get the relief of declaration and permanent injunction?

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(ii) To what other relief, the defendant is entitled for?

15. Considering the above, it is very much clear that the trial Court has framed only general and common issues with regard to the counter claim and no additional issue touching any specific plea has been framed. It is well settled that, where the Court frames additional issues and finds that the evidence already adduced is insufficient for their proper adjudication, it may afford the parties an opportunity to adduce further evidence with reference to such additional issues. On the other hand, if the Court is satisfied that the evidence already available on record is sufficient to decide the additional issues, it is not mandatory for the Court to afford a further opportunity to the parties to let in additional evidence.

16. As rightly contended by the learned Counsel for the defendant, mere framing of additional issues by itself cannot constitute a ground for setting aside the judgment and decree of the trial Court. At this juncture, it is necessary to refer Section 99 C.P.C., which is extracted hereunder:



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“99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction .-

No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder [or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court:

Provided that nothing in this section shall apply to non-joinder of a necessary party.]

17. Section 99 expressly mandates that no decree shall be reversed or substantially varied, nor shall any case be remanded in appeal on account of any misjoinder (non-joinder), defect or irregularity in any proceedings not affecting the merits of the case of the jurisdiction of the Court. Generally, an interference with a decree after full pledged trial is not permissible unless the alleged procedural lapse is shown to have materially affected the decision on merits or occasioned failure of justice.

18. In the case on hand, the first appellate Judge has nowhere recorded any finding that non-filing of the reply statement to the counter

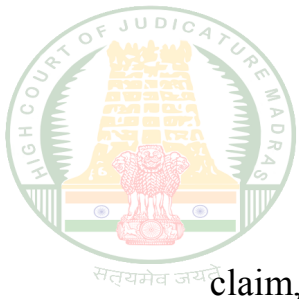


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claim or framing additional at a later stage had affected the merits of the case or the jurisdiction of the trial Court. Considering the above, as rightly contended by the learned Counsel for the defendant, the remand order is very much against the mandate contemplated under Section 99 C.P.C.

19. The learned First Appellate Judge placed reliance on the decisions in *Sharma v. Tarloki Nath Kalia*, reported in *AIR 1974 P&H 287*, and *S. Gause Mohidin v. Sivalingam and Others*, reported in *2010 (1) MLJ 755*, which were cited by the learned counsel for the plaintiff in support of the contention that, after framing additional issues, the Courts had afforded the parties an opportunity to adduce further evidence. A careful reading of the said decisions would reveal that, in both cases, the Courts found that there had been a substantial denial of opportunity, resulting in prejudice to the parties and thereby affecting the adjudication of the case. However, the facts of the present case stand on an entirely different footing. The plaintiff had full knowledge of the counter claim from the time of its filing, participated in the joint trial without raising any objection, adduced evidence on all the issues, including those relating to the declaratory and injunctive reliefs sought in the counter

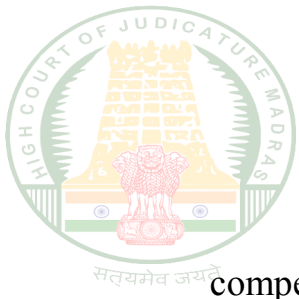


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claim, and never sought either permission to file an additional pleading or an opportunity to adduce further evidence before the trial Court. It is also pertinent to note that the plaintiff has neither pleaded nor established any specific prejudice or failure of justice occasioned by the non-filing of a reply statement to the counter claim. Therefore, the above decisions are clearly distinguishable on facts and have no application to the case on hand.

20. The learned Counsel for the defendant would rely on a decision of the Hon'ble Supreme Court in *Sirajudheen Vs. Zeenath and others* reported in **2023 SAR (Civil) 397**, wherein the Hon'ble Apex Court has specifically held that the powers under Order 41 Rule 23, 23A C.P.C., cannot be exercised routinely or mechanically. A remand under Rule 23 is contemplated whether the suit has been disposed of upon a preliminary point and the decree is reversed in appeal, whereas Rule 23A enables the remand in other cases only where the appellate Court considers a re-trial necessary after the reversal of the decree. The remand resulting in reopening of a trial cannot be ordered only where the retrial is found indispensable. When the parties have already undergone a full pledged trial, the evidence is available on record and the appellate Court itself is



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competent to re-appreciate the evidence as the final Court on facts, an order of remand ought not to be passed merely on account of alleged procedural irregularities not resulting in failure of justice. Moreover, unnecessary remand merely prolongs litigation and defeats the mandate of expeditious adjudication.

21. As rightly pointed out by the learned Counsel for the defendant, the first appellate Court in the impugned judgment, has nowhere recorded any finding as to the specific prejudice caused to the parties. In the case on hand, the suits are of the year 2008. The parties had already undergone a full pledged trial extending over several years. It is pertinent to mention that the first appellate Court has not assigned any compelling reason necessitating for remanding the matter back to the trial Court for fresh consideration.

22. Considering the above, this Court has no hesitation in holding that the impugned common judgment and decrees for remand passed by the first appellate Court cannot be sustained and the same are liable to be set aside. In the facts and circumstances of the case, the parties are directed to bear their own costs.



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23. In the result, the Civil Miscellaneous Appeals are allowed and the common judgment and decrees passed by the first appellate Court are set aside and the appeals are restored to the file of the first appellate Court for fresh disposal on merits and in accordance with law on the basis of the evidence already available on record. It is open to the first appellate Court, if found necessary, to permit limited additional evidence in accordance with law. The learned first appellate Judge shall dispose of the appeals within a period of two months from the date of receipt of a copy of this judgment. The parties are directed to bear their own costs.

19.06.2026

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

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To

1. The Subordinate Court, Sankarankovil,
2. The Additional District Munsif Court, Sankarankovil,
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

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K.MURALI SHANKAR,J.

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