

(1935) 01 MAD CK 0056
In the Madras High Court

(Anakkaran Puthiya Valappil Valiapurayil) Kunha Mina Umma
and Others

APPELLANT

Vs

(Anakkaran Puthiyavilappil Valiapurayil) Kunhipathumma and
Others

RESPONDENT

Date of Decision : 17-01-1935

Acts Referred:

Citation : AIR 1935 Mad 715 : (1935) 41 LW 758

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This is an appeal from the order of the Subordinate Judge of Tellicherry dated 10th March 1932 remanding on appeal a suit for fresh disposal by the District Munsif of Taliparamba. The suit had been originally disposed of by the trial Court in August 1925 on a preliminary point, and that decision was appealed from up to the High Court, and it was after the decision of the High Court in 1928 that the suit was disposed of on the merits on 4th January 1929 by the District Munsif in a very lengthy and elaborate judgment dealing with all the points or issues raised in the suit. The judgment of the District Munsif did not certainly proceed on a preliminary point and nevertheless, the Subordinate Judge in appeal has remanded the suit for fresh disposal without giving sufficient reasons for taking this course. It is no doubt open to an appellate Court to remand a suit for fresh disposal under what are called the inherent powers possessed by it, but the inherent powers should be exercised with discretion, and only when the interests of justice require it, and not for any other purpose. In this case it is not clearly stated by the appellate Court that the interests of justice did require a remand. All that has been done in the judgment of the appellate Court—and it is also a fairly lengthy judgment is to point out several mistakes which the trial Court had in its opinion committed, and finally to conclude that "the decree of the trial Court cannot be upheld as it stands," and that

to decide the suit without keeping in view the question raised by the pleadings would be prejudicial to the interests of both parties.

2. There is no observation made that the evidence on record is not sufficient to Tenable the appellate Court to decide all the issues itself. Nor is there any direction that any fresh evidence might be let in by the parties after remand. In short the case appears to be one in which the appellate Court, finding that the trial Court has fallen into error here and there, instead of correcting those errors and deciding the suit itself in appeal, has asked the trial Court to do its work once again in the light of the criticisms made by the appellate Court of its original judgment. This course is one which I cannot approve of, and in a case like this, where the suit itself had been pending for many years and the trial Court had taken considerable pains in dealing with all the controversies raised in the suit, there was no justification either in law or in common sense, for the course adopted by the lower appellate Court. In my opinion, the order of remand is almost an abuse of the power of remand possessed by an appellate Court.

3. The order appealed from is therefore set aside so far as it purports to remand the suit to the first Court for fresh disposal, and the lower appellate Court is directed to restore the appeals to its file and dispose of them afresh according to law. The costs of the parties in this Court will abide the result and be provided for in the revised decree of the lower appellate Court.