
(1989) 08 MAD CK 0027
In the Madras High Court
Case No : L.P.A. 17 and 18 of 1987

Visalakshi Ammal

APPELLANT

Vs

Dhanalakshmi Ammal and Others

RESPONDENT

Date of Decision : 03-08-1989

Acts Referred:

Citation : (1989) 08 MAD CK 0027

Hon'ble Judges : Nainar Sundaram, J;Bellie, J

Bench : Division Bench

Advocate : G. Masilamani for Mr. V. Venkatraman, for the Appellant; R.S. Venkatachari, for the Respondent

Judgement

Nainar Sundaram, J.—These two Letters Patent Appeals are by defendants 4 and 2 respectively in O.S. 347 of 1977 on the file of the Subordinate Judge, Cuddalore. That was a suit instituted by the first respondent herein for partition and separate possession. The first court dismissed the suit. The plaintiff preferred App. No. 93 of 1980 to this Court and that came to be disposed of by Swammikkannu, J. and the learned single Judge thought fit to make an order of remand to the first court. These two Letters Patent appeals are directed against the judgment and decree of the learned single Judge. What exactly weighed with the learned single Judge in making the order of remand can be gathered from the following passages occurring in the judgment of the learned single Judge:?

The lower court has taken issue Nos. 1, 2 and 6 for discussion in the light of the evidence let in. So far as the question of equity is concerned, it is seen that the lower court has not considered that aspect satisfactorily. Similarly, the question of res judicata, which is framed as issue No. 6 in the case, seems to have been dealt with by the lower court without reference to the latest decisions of the High Court and the Supreme Court on the point. Regarding both the principle of equity and the principle of res judicata, number of decisions as mentioned above, have been cited by Mr. R.S. Venkatachari, learned counsel for the appellant.

In this case, Mr. S. Govindaswami, learned Government Pleader for Pondicherry State, has also been given notice, and he has also advanced arguments regarding the position of law, especially when the French Law, is also said to be involved in the matter that has to be determined in the dispute between the parties.

It is seen that the discussions relating to the various aspects including the above exhibit a case has not been properly approached by the lower Court. It is further seen that even additional evidence has to be let in by both sides in order to appreciate the issues involved in accordance with law.

Therefore, without discussing the evidence available on record, this Court is of the opinion that, in the interests of justice, the judgment and decree of the lower court have to be set aside and the matter remanded to the lower Court for fresh disposal in accordance with law and in the light of the observations made above. The lower court has necessarily to apply its mind with respect to the various principles of law that have been argued by both the sides in this Court, and consider the issues after giving opportunity to both sides to adduce fresh evidence, both oral and documentary and come to a conclusion after considering the entire evidence available on record. An order is passed accordingly.

2. We heard Mr. G. Masilamani, learned counsel appearing for the appellants-defendants 4 and 2 and he has a grievance that the order of remand ought not to have been made and the questions ought to have been decided by the learned single Judge himself. Mr. R.S. Venkatachari, learned counsel appearing for the first respondent-plaintiff, would also submit that the questions ought to have seen a decision at the hands of the learned single Judge himself and the order of remittal need not have been made.

3. We are not for a moment taking note of and acting upon, only this stand expressed by both the sides, while we are deciding the question as to whether an order of remand ought not to have been made or the lis ought to have been decided on merits by the learned single judge himself. We would like to make our own assessment of this question. As we could see from the extract of the passages from the judgment of the learned single Judge, on the opinion that the first court has not considered the aspect of equity satisfactorily and the question of res judicata has been dealt with by the first court without reference to the latest decisions and additional evidence may have to be let in by the parties, the learned single Judge deemed fit to set aside the judgment and decree of the first court and to remit the suit for fresh disposal. The unsatisfactory consideration of an issue by the first court, and the non-advertence to the judicial precedents by the first court while deciding an issue and the need to take additional evidence, should not always be counted in favour of making an order of remand. These lacunae, if in fact they are present, can be rectified by the appellate Court itself, unless there are very compelling circumstances to make an order of remand. An order of remand should not be taken to be matter of course on the above grounds. The power of remand should be sparingly exercised. There should be

always endeavour to dispose of the case by the appellate court itself when the commissions and omissions made by the first court could be corrected by the appellate Court. It is not claimed by either side that there is a total dearth of evidence to decide the concerned questions. May be the parties were and are anxious to place additional evidence. But even that question can be thrashed out and settled by the appellate court itself. All the questions require comprehensive consideration on merits and decisions thereon the learned single Judge himself and we are not able to sustain the order of remand made on the grounds expressed by the learned single Judge on the facts of the present case. The question of additional evidence, if there is a move by any of the parties, shall certainly be considered by the learned single Judge on merits while disposing of the first appeal. The above features oblige us to interfere in Letters Patent appeals, and we allow these two Letters Patent appeals and set aside the judgment and decree of the learned single Judge and we further direct that App. No. 93 of 1980 shall be disposed of on merits with expedition, considering the fact that the litigation between the parties commenced even in 1963. The Office will see to it that the appeal is listed at the top of the list, taking note of our above directions at the earliest possible time. There will be no order as to costs in these Letter patent appeals.