



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 31.01.2012

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

C.M.A.(MD)No.1434 of 2011

S.A.C.Alagan

... Appellant/Respondent/
Plaintiff

- Vs -

-

1. All India Islamic Foundation,
Chennai through its General Manager,
Ahmed Zalaudeen,
No.688, Anna Salai,
Chennai-6.

2. The Crescent Matriculation School,
For Girls through its Manager
Mohamed Mansoor,
Kallampatti, Chatrapatti Post,
Madurai North Taluk,
Madurai.

... Respondents/Appellants/
Defendants

Prayer: Appeal filed under Order 43 Rule 1(r) of the Civil Procedure Code against the Judgment and Decree dated 22.12.2009 made in A.S.No.32 of 2008 on the file of the Principal District Judge, Madurai in reversing the judgment and decree dated 30.12.2004 made in O.S.No.141 of 2001 on the file of the District Munsif, Melur.

For Appellant : Mr.V.Maragathavel

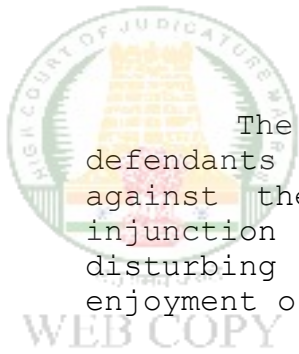
For Respondents: Mr.Babu Rajendran

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JUDGMENT

This appeal is filed by the appellant as against the order of remand dated 22.12.2009 made in A.S.No.32 of 2008 on the file of the Principal District Judge, Madurai in reversing the judgment and decree dated 30.12.2004 made in O.S.No.141 of 2001 on the file of the District Munsif, Melur.

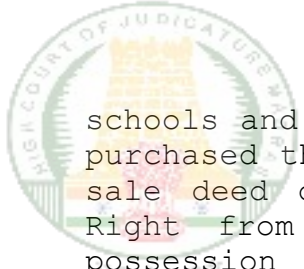
2. The brief facts which are necessary to decide the case are as follows:
<https://hcservices.ecourts.gov.in/hcservices/>



The appellant is the plaintiff and the respondents are the defendants before the trial Court. The appellant herein filed a suit as against the respondents herein in O.S.No.141 of 2001 for permanent injunction restraining the respondents/defendants from in any way disturbing or interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

(ii) It is the case of the appellant before the trial Court that the suit schedule property originally belonged to one Samiar Alagan ancestrally. The suit property fell to the share of one Veeralingam, father of Samiar Alagan in the oral partition taken place among his family members. After the demise of Veeralingam, Samiar Alagan succeeded to the suit property. The patta stands in the joint names of one Sami Ambalam S/o Karuppanan, Alagan S/o Veerappan and Veeralingam S/o Kathan and the suit property forms part of S.No.11/1. Though the patta stands jointly in the name of above referred three persons and the parties are enjoying their respective portion of the property, it is the case of the appellant that Veeralingam, father of Samiar Alagan and later Samiar Alagan was paid the kist to the Government for this property. Patta and other revenue records also stood in their names. The appellant/plaintiff purchased the suit property from the said Samiar Alagan under a registered sale deed dated 09.09.98. Pursuant to the sale, he took possession of the property on the same date. He has also taken steps for transfer of patta in his name and he has also paid kist for the land. Thus the appellant/plaintiff has been in possession and enjoyment of the property purchased. In the meanwhile, one Alagan, the neighbouring land owner and joint pattadar of the land along with one E.M.G.Soundararajan attempted to interfere with the plaintiff's possession over the property and hence, the appellant/plaintiff filed O.S.No.79 of 2000 for declaration and injunction. The said suit was decreed in his favour. During the pendency of the said suit, the first respondent/first defendant herein obtained some documents purported to be the sale from E.M.Gopalakrishna Kone trust, the second defendant in the earlier suit viz., O.S.No.79 of 2000. The first respondent/first defendant is running a girls school nearby through his agents and the second respondent/2nd defendant are now attempting to grab the suit property. Hence, the appellant/plaintiff herein filed a suit as against the respondents/defendants in O.S.No.141 of 2001 on the file of the District Munsif, Melur for an injunction as against the respondents herein.

(iii) The case of the appellant was resisted by the respondents by denying the allegations of the appellant/plaintiff that the property originally belonged to one Veeralingam, father of Samiar Alagan ancestrally. Similarly the respondents denied that patta stands in the joint names of Sami Ambalam, Alagan and Veeralingam. They have also denied the purchase of the property by the appellant/plaintiff from Samiar Alagan under a registered sale deed dated 09.09.98. It is a specific defence of the respondents that the appellant/plaintiff had never been the owner of the property and he has no right in possession of the same. Actually, E.M.G.Soundararajan and Alagan were in possession and enjoyment of the suit property and the said E.M.G.Soundararajan as trustee has purchased totally 6 acres and 9 cents in S.No.11/1 through two registered sale deeds dated 02.04.92 and 29.09.92. The foundation of the respondents/defendants is a very renowned establishment and it has



schools and colleges in various parts of Tamil Nadu. The defendants have purchased the suit property for valuable consideration through registered sale deed dated 09.04.01 in the name of All India Ismail Foundation. Right from the date of purchase, the respondents/defendants are in possession and enjoyment of the property and they are running a girls school and all the revenue records stand in the name of the foundation. Thus the respondents/defendants prayed for a dismissal for the suit for injunction.

(iv) In order to prove the case on the side of the appellant/plaintiff, he himself examined as P.W.1 besides examining one Samiar Alagan as P.W.2 and marked 12 documents as Ex.A.1 to A.12. On the side of the respondents/defendants, two witnesses were examined as D.W.1 and D.W.2 and three documents were marked as Ex.B.1 to B.3.

(v) The trial Court, after analysing the entire evidence on record, decreed the suit in favour of the appellant. Aggrieved over the same, the respondents herein filed the appeal in A.S.No.32 of 2008.

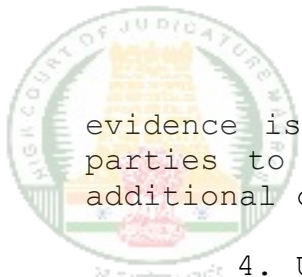
(vi) The lower Appellate Court, on hearing the submissions of both the sides, by its order dated 22.12.2009, set aside the judgment and decree of the trial Court and remit the same for fresh trial on a reasoning that though the appellants/Plaintiff had stated that Samiyar Alagan got 1 Acre 50 Cents as legal heir of Veeralingam, he has not produced any document to show that Samiyar Alagan has got 1 Acre 50 Cents as legal heir of Veeralingam. But the plaintiff had purchased the property from Veeralingam on 09.09.98. The sale deed is marked as Ex.A.1. But in Ex.A.1, Samiyar Alagan stated the suit property belonged to him and his family members ancestrally and in the oral partition among the family members, the suit property was allotted to him and he was enjoying the property by paying kists. But no document was produced in the name of Samiyar Alagan.

(vii) Similarly on the side of the respondents herein, though it was claimed that the property was purchased by one E.M.G.Soundararajan by two sale deeds dated 02.04.92 and 29.09.92 from one Alagan, but they had not proved that Alagan has title for for entire 6 Acres and 9 cents. Thus, the lower

appellate Court, on a reasoning that both sides have not proved their title by producing convincing title deeds and thus set aside the judgment and decree passed by the District Munsif, Melur in O.S.No.141 of 2001 dated 30.12.2004 and remanded back to the lower Court for fresh disposal.

3. In my considered opinion, the reasons assigned by the lower Appellate Court for remanding the matter cannot be said to be a valid reason. It is a well settled legal principle that the order of remand should not be made as a routine course to fill up the lacuna by allowing the parties to adduce the evidence. But, in the instant case, the lower

Appellate Court, without looking into the legal principles, casually passed the order of remand. However, in my considered opinion, the appeal is only a continuation of original proceedings. If the lower Appellate Court, in its opinion, has come to the conclusion that additional



evidence is necessary, the lower Appellate Court itself, can permit the parties to adduce the additional evidence and also allow them to mark additional documents.

4. Under such circumstances, the order of remand is not necessary in this matter. Therefore, the order of remand passed by the lower Appellate Court is set aside and the lower Appellate Court is directed to take up the appeal and dispose of the same on merits, by affording opportunity to both the parties to adduce additional evidence and permit them to mark additional documents if any and decide the case afresh. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

5. Accordingly, the Civil Miscellaneous Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS)

To

1. The Principal District Judge, Madurai.

2. The District Munsif, Melur.

+1 CC to Mr. Babu Rajendran, Advocate, Sr. no. 2547

+1 CC to Mr. V. Maragathavel, Advocate, Sr. No. 2743

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31.01.2012

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