



C.M.A.(MD)No.394 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.06.2026

PRONOUNCED ON: 28.07.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.394 of 2025

and

C.M.P.(MD)No.7018 of 2025

V.Shanmugam : Appellant/Respondent/Plaintiff

Vs.

1.T.R.Chandramoorthy

2.T.R.C.Naganandhini.

3.T.R.C.Shyambabu : Respondents/Appellants/
Defendants 4 to 6

PRAYER:- Civil Miscellaneous Appeal is filed under Order 43 Rule (1) (U) C.P.C., against the order of remand back to the trial Court made in A.S.No.1 of 2020, dated 19.11.2024, on the file of the Subordinate Court, Melur, in O.S.No.56 of 1999, on the file of the District Munsif Court, Melur.



WEB COPY



C.M.A.(MD)No.394 of 2025

For Appellant : Mr.V.P.Rajan

For Respondents :Mr.K.Malaimaran
for R.1 and R.2
: No Appearance for R.3

JUDGMENT

The Civil Miscellaneous Appeals is directed against the judgment made in A.S.No.1 of 2020, dated 19.11.2024, on the file of the Subordinate Court, Melur, in remanding the suit in O.S.No.56 of 1999 to the file of the District Munsif Court, Melur for fresh disposal.

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

3. The appellants are the defendants 4 to 6 in O.S.No.96 of 1999, on the file of the District Munsif Court, Melur. The respondent/plaintiff originally filed a suit in O.S.No.96 of 1999 claiming permanent injunction, but subsequently, amended the plaint, claiming the relief of declaration that the suit property belongs to the plaintiff absolutely and for consequential permanent injunction restraining the defendants and

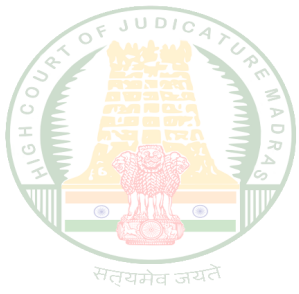


C.M.A.(MD)No.394 of 2025

WEB COPY

their men from in any manner interfering with the peaceful possession and enjoyment of the suit property by the plaintiff. Since the defendants 1 to 3 had died, during the pendency of the suit, the defendants 4 to 6 filed a written statement and defended the suit.

4. The learned District Munsif, after framing necessary issues and after full trial, passed the judgment and decree dated 16.12.2016 granting the reliefs of declaration and consequential permanent injunction as prayed for. Aggrieved by the said judgment and decree, the defendants 4 to 6 preferred an appeal in A.S.No.1 of 2020 and the learned Subordinate Judge, considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree dated 19.11.2024, allowing the appeal and thereby setting aside the judgment and decree passed in O.S.No.56 of 1999 dated 16.12.2016 by the District Munsif Court, Melur and remanded the suit back to the trial Court for fresh disposal. Challenging the impugned judgment of remand, the plaintiff has preferred the present Civil Miscellaneous Appeal.



C.M.A.(MD)No.394 of 2025

WEB COPY

5. As rightly pointed out by the learned Counsel for the appellant/plaintiff, the learned first appellate Judge remanded the matter by assigning two reasons. The first one is that the plaintiff's vendor's title deeds had not been marked and that the second one is that the Advocate Commissioner who was appointed before the trial Court did not show the measurements and had only shown the physical features of the property, has concluded thus:

“..... Hence this case is hereby remanded to the trial court for adducing more additional evidence regarding the title to the suit property and to appoint an advocate commissioner to measure the same with the help of the qualified surveyor and to adduce evidence on the revenue departments to decide the matter afresh.”

6. At the outset, as rightly pointed out by the learned Counsel for the appellant/plaintiff, it is pertinent to note that the Advocate Commissioner who had been appointed in the trial Court, inspected the property and measured the same with the help of a qualified surveyor and submitted a report along with the plan giving the measurements. More importantly, the Advocate Commissioner's report and plan came to be exhibited as Exs.C.1 and C.2 before the trial Court. As rightly pointed



C.M.A.(MD)No.394 of 2025

WEB COPY

out by the learned Counsel for the plaintiff, the Commissioner in his report and plan, has mentioned the measurements and he has specifically stated that he had taken the assistance of the Surveyor and the Village Administrative Officer for the execution of the commission warrant. But the learned first appellate Judge in paragraph No.13 (vi) has observed thus:

“ The Advocate Commissioner was appointed and his report and plan, FMB were marked as Exs.C.1 to C.3. On perusal of Ex.C.1 advocate Commissioner's report it has not shown the measurements but only the physical features of the suit property. It is not an exhaustive report and plan. It shows the physical nature of the property.”

7. It is very unfortunate that the learned first appellante Judge, without perusing the Commissioner's report and plan, has mechanically made an observation that the report and plan does not contain measurements of the suit property and it only covers the physical features of the suit property. Moreover, the first appellate Court has not recorded any finding that the Commissioner's report suffered from any material infirmity or that the measurements recorded therein were either incorrect or insufficient for deciding the controversy. In the absence of any such



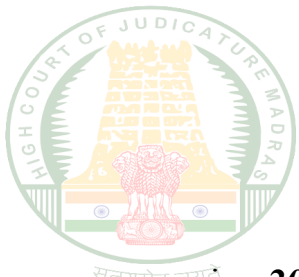
C.M.A.(MD)No.394 of 2025

WEB COPY

finding, the direction once again to appoint the Advocate Commissioner to measure the very same property cannot be sustained.

8. As already pointed out, the learned first appellate Judge has further directed the trial Court to afford opportunity to the parties particularly to the plaintiff to produce his vendor's title deeds. It is pertinent to note that the plaintiff prosecuted the suit on the basis of his pleadings and the documents relied upon by him, and both parties were afforded adequate opportunities to let in evidence. More importantly, neither the plaintiff nor the defendants sought permission to adduce additional evidence before the first appellate Court in accordance with Order 41 Rule 27 C.P.C. The first appellate Court has also not recorded any finding that the case satisfied the requirements contemplated under the said provision so as to warrant the reception of additional evidence. In such circumstances, the direction enabling the parties to adduce further evidence amounts to granting them an opportunity to fill up the lacuna in their respective evidence, which is impermissible in law.

9. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in *Sirajudheen Vs. Zeenath and others* reported

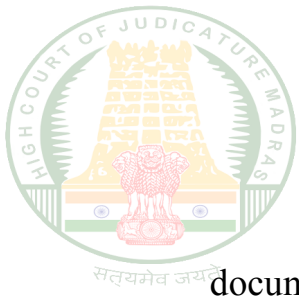


C.M.A.(MD)No.394 of 2025

WEB COPY

in **2023 SAR (Civil) 397**, wherein the Hon'ble Apex Court has specifically held that the power of remand under Order 41 Rules 23 and 23A C.P.C., cannot be exercised routinely or mechanically. A remand under Rule 23 is permissible only where the suit has been disposed of upon a preliminary point and the decree is reversed in appeal, whereas Rule 23A empowers the appellate Court to order a remand in other cases only where, the appellate Court considers a re-trial necessary, upon the reversal of the decree. The remand resulting in reopening of a trial cannot be ordered, where it is found to be indispensable. When the parties have already undergone a full fledged trial, the evidence is available on record and the appellate Court itself is 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 and unwarranted order of remand merely prolongs litigation and defeats the mandate of expeditious adjudication.

10. The above principles squarely apply to the case on hand. The learned first appellate Judge, being the final Court on facts, was under a statutory obligation to independently re-appreciate the entire oral and

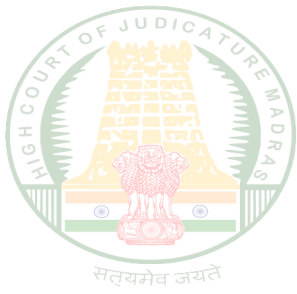


C.M.A.(MD)No.394 of 2025

WEB COPY

documentary evidence available on record and adjudicate the appeal on its own merits. The materials necessary for deciding the appeal were already available on record, and the impugned judgment does not disclose any circumstance warranting a retrial of the suit. The learned first appellate Judge has also not recorded any finding that the case falls within the ambit of Order XLI Rules 23, 23-A or 25 of the Code of Civil Procedure, so as to justify an order of remand.

11. This Court is constrained to observe that the learned first appellate Judge has ordered the remand in a mechanical manner without examining whether the statutory requirements governing the exercise of such power were satisfied. The impugned judgment does not assign any legally sustainable or compelling reason necessitating a fresh trial. It reflects a complete non-application of mind to the scope and ambit of Order XLI Rules 23, 23-A and 25 CPC. Such indiscriminate orders of remand unnecessarily prolong litigation, increase the hardship and expense of the parties, and defeat the object of expeditious adjudication. The order of remand, therefore, cannot be sustained and is liable to be set aside.



C.M.A.(MD)No.394 of 2025

WEB COPY

12. In view of the above, this Court has no hesitation in holding that the impugned judgment and decree of remand passed by the learned first appellate Judge cannot be sustained and is, therefore, liable to be set aside. Consequently, the appeal is restored to the file of the first appellate Court for fresh disposal on merits, on the basis of the pleadings and the evidence already available on record. But, it is made clear that, if the circumstances so warrant, the first appellate Court shall be at liberty to pass appropriate orders strictly in accordance with the provisions of Order XLI Rule 27 of the Code of Civil Procedure.

13. In the result, the Civil Miscellaneous Appeal is allowed and the judgment and decree of remand passed by the first appellate Court are set aside. The appeal is restored to the file of the learned first appellate Judge, who is directed to dispose of the same on merits, in accordance with law and in the light of the observations made herein, within a period of two months from the date of receipt of a copy of this judgment, preferably without granting unnecessary adjournments, particularly considering that the suit has been pending since 1999. The Registry is



C.M.A.(MD)No.394 of 2025

WEB COPY

directed to forward a copy of this judgment to the learned first appellate Judge for information and future guidance. Consequently, the connected Civil Miscellaneous Petition is closed. There shall be no order as to costs

28.07.2026

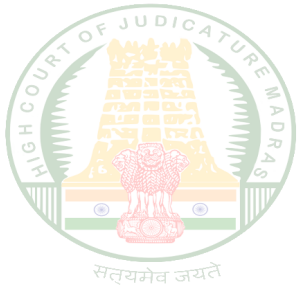
Index : Yes : No
Internet : Yes : No
NCC : Yes : No

Note: The Registry is directed to send a copy of this Judgment to the concerned learned first appellate Judge.

SSL

To

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



WEB COPY



C.M.A.(MD)No.394 of 2025

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.A.(MD)No.394 of 2025

28.07.2026