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C.A.No. 4921 OF 1997  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4921 OF 1997

V. PALANI PADAYACHI

APPELLANT

VERSUS

G. ANANDHAN (DEAD) BY LRS.

RESPONDENTS

O R D E R

This appeal is by the plaintiff. The plaintiff filed a suit for declaration and possession of the suit property. The Trial Court decreed the suit. The defendant filed First Appeal challenging the judgment and decree passed by the Trial Court. The First Appellate Court found that the plaintiff failed to establish his title to the suit property on the ground that the description of the suit property given in the plaint did not tally with the documents on which the plaintiff based his claim. In that view, the First Appellate Court set aside the judgment and decree of the Trial Court and remitted the suit to the Trial Court for disposal. While doing so, the First Appellate Court also permitted both the parties to lead additional evidence, if any. Aggrieved by the judgment and decree passed by the First Appellate Court, the defendant filed Civil Miscellaneous Appeal before the High Court. The learned Single Judge of the High Court, having heard the parties, found that the order of remand made by the First Appellate Court was not at all sustainable on the ground

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that when the plaintiff failed to establish the title to the suit property, as described in the plaint and the documents produced in support of the claim of the plaintiff did not pertain to the suit property, the First Appellate Court ought not to have remanded the case; when it was not shown that the appeal could not be disposed of finally by the First Appellate Court for want of evidence or on the available evidence, rights of the parties could not be adjudicated; the matter should not have been remanded so as to provide an opportunity to the plaintiff to fill up lacuna by leading the evidence again. In this view, the High Court set aside the order passed by the Appellate Court and dismissed the suit.

The learned counsel for the appellant contended that the High Court ought not to have interfered with the order of remand, particularly, when the First Appellate Court gave opportunity to both the sides to lead additional evidence.

Per contra, the learned counsel for the respondents made submissions supporting the impugned order. The learned counsel urged that the First Appellate court having held that the plaintiff failed to establish his case as to the suit schedule property, had no good reason to remand the case to the Trial Court.

The First Appellate Court as well as the High Court have found that the plaintiff failed to establish title to the suit

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schedule property in the light of the documents filed by the plaintiff himself and this is a finding of fact. The learned counsel for the appellant was not in a position to show as to for what good reason the case should have been remanded to the Trial Court.

Under these circumstances, we are not in a position to find fault with the impugned order. We find no merit in this appeal. Consequently, it stands dismissed, but, with no order as to costs.

At this stage, the learned counsel for the appellant contended that the appellant should not be left without any remedy. It is not for us to say anything more in this regard. If the appellant has got any remedy available in law against his vendor, it is open to the appellant to adopt such a course.

.....J.  
(SHIVARAJ V. PATIL)

New Delhi, (D.M. DHARMADHIKARI) August 19, 2003. ....J.

ITEM NO. 107 COURT NO.9 SECTION XII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO.4921/1997

V. PALANI PADAYACHI... APPELLANT

VERSUS

G. ANANDHAN (DEAD) BY LRS. ... RESPONDENTS  
(With office report)

DATE: 19/08/2003 This appeal was called on for hearing today.

CORAM :  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL  
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For appellant (s)Mr. K. Ram Kumar, Adv.

For respondent (s)Mr. V. Prabhakar, Adv.  
for Ms. Revathy Raghavan, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Mr. K. Ram Kumar, learned counsel for the appellant made his submissions for 15 minutes.  
Mr. V. Prabhakar, learned counsel for the respondents made his submissions for few minutes.  
The appeal is dismissed with no order as to costs in terms of the signed order.

Sarita(Shelly Sengupta)  
Court Master

(Signed order is placed on the file)