

S. Mariammal Vs. Krishnamurthy,

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Court : Chennai

Decided On : Mar-16-2007

Reported in : (2007)3MLJ321

Judge : S. Manikumar, J.

Acts : Code of Civil Procedure (CPC) - Sections 24 - Order 11, Rule 31 - Order 20, Rules 3 and 23 - Order 41, Rules 23 to 29 and 33

Appeal No. : C.M.A. (NPD-B) No. 1125 of 2005

Appellant : S. Mariammal

Respondent : Krishnamurthy, ;ramasamy and Saminathan

Advocate for Def. : V. Raghupathi, Adv.

Advocate for Pet/Ap. : R.T. Shyamala, Adv.

Judgement :

S. Manikumar, J.

1. This appeal is preferred against the judgment and decree dated 03.11.2004 in A.S. No. 53 of 2004 on the file of Principal Subordinate Judge, Nagapattinam.

2. Brief facts leading to the appeal are as follows:

(i) The plaintiff purchased the suit property from Thiru. Gnanasambandam and his sons under the registered Sale Deed dated 13.05.1981. The vendor Thiru. Gnanasambandam purchased the suit property and other properties from Thiru. Bhagwandas. The plaintiff owns some other lands in the village, where the suit property is located. The suit property is situated in S. No. 20/9, to the North of Sivan North Street, Puttur village. When the suit property was purchased by the plaintiff, there was a house and it was later on altered. There was also a cattle shed. Thiru. Subbarama Nadar, who owned the land in S. No. 20/9 had donated a small portion of the land to the school and his son had sold some portion of the land in the same Survey number to one Thiru. Subramanian. The said property has now been purchased by Velankanni Arokia Matha. A rough sketch is marked along with the plaint. The portion marked as 'ABCD' in the suit sketch has been gifted to the school. Prior to the purchase of the property by the plaintiff, the school was located in an old concrete building (Tharsu building). The western side of the compound wall of the school property and the western side wall of the school building fall in the same line. The building constructed in the northern side of the school building ends with the compound wall and it is shown as 'BC' in the rough sketch. There are five windows on the western wall of the school building. The property situated on the northern side of the wall marked as 'BC' belongs to the plaintiff. The plaintiff is in possession and enjoyment of the suit property.

(ii) The first defendant is the Headmaster of the school. The school is administered by the Panchayat Union. The first defendant is acting on the ill advice of the second and third defendants. The second defendant is a retired Police Constable. He owns land on the western side of the school property. There is a dispute between the plaintiff and the second defendant with regard to the boundary. Right from the beginning, there is dispute between them and cases are pending. Now with the assistance of the third defendant, the second defendant is acting as if, he is supporting the school administration and claims that he has got lands on the northern side of the school compound wall. The first defendant has approached the Tahsildar and other revenue authorities for taking immediate steps. Since the plaintiff is also a teacher, the Revenue authorities requested the plaintiff's husband to provide place for nutritious meal centre for which the plaintiff's husband informed that he would reply within 10 days. In the meantime, on 04.01.2001,

defendants 1 to 3 removed the window on the northern side of the compound wall and attempted to trespass into the plaintiff's property. Regarding the attempt made by defendants 1 to 3, a complaint was lodged with the Nagapattinam Town Police. Though the police came to the spot and cautioned the defendants, no useful purpose was served. The defendants did not heed to the reply given by the plaintiff, that he would give a proper reply later on to the defendants as regards providing place for nutritious meal centre. On the instigation of the defendants, students have attempted to trespass into the plaintiff's property through the broken window. Unless the defendants and their men are restrained from interfering with the possession and enjoyment of the suit property, the plaintiff will be put to serious and irreparable loss.

Therefore, the plaintiff filed a suit for permanent injunction restraining the defendants from interfering with or otherwise causing disturbance in the peaceful possession and enjoyment of the suit property. The prayer in the suit was amended later on.

(iii) The third defendant filed a detailed written statement and the same was adopted by defendants 1 and 2. The defendants admitted that on 13.01.1981, the plaintiff had purchased the property in S. No. 20/9. But the description of the property is not properly given. The area of the scheduled property has not been properly mentioned in the plaint. Though it is stated in the plaint that Subbarama Nadar had donated a small portion of the land in S. No. 20/9, the extent of the land donated by him has been specifically suppressed. The rough sketch filed along with the plaint is also incorrect. It is admitted that two items of property to an extent of 37 cents and 50 cents were purchased by the plaintiff on 13.05.2001. Only the second item, namely, 50 cents has been mentioned in the plaint schedule and this is done deliberately to twist the case. The defendants admitted that they have broken the window and further submitted that the plaintiff has suppressed the reasons for the same and filed the suit.

(iv) The land gifted by Thiru. Subbarama Nadar to the school in S. No. 20/9 runs 22 meters, east to west in Sivan north street and 20 meters, south to north. In the said land, a building was constructed in the year 1972 and a R.C. building was put

up in 1994. The school building is to an extent of 15 metres, east to west and 12 metres south to north. There is a vacant space on the western side of the school building to an extent of 7 metres, east to west and 4 metres, south to north. The plaintiff has put up a building in the vacant space on the western side. He has also put up a cattle shed by annexing the compound wall of the school building on the western side. The plaintiff has also encroached the vacant space of 4 metres on the northern side of the school building. On the representation of defendants 1 and 2, a petition was presented to the District Collector and the encroachments were removed. Thereafter, the District Collector, Tahsildar, Panchayat Union Commissioner inspected and measured the lands. The plaintiff accepted to give adequate lands from his property to the school in lieu of the land, on which he had put up the construction and the cattle shed. On that basis, the properties were measured on 04.01.2001. Boundary stones were laid in the lands belonging to the plaintiff, situated on the northern side of the school. Adequate space was marked for construction of Nutritious Meal Centre and steps were taken in this regard.

(v) While that be the factual position, the plaintiff had suddenly instituted a suit against the defendants, who were in no way connected with the action of the authorities. The description of the suit property is not properly given in the schedule and the property shown in the sketch does not belong to the plaintiff. The defendants have no connection in respect of the property purchased under the Sale Deed dated 13.05.1981. As per the Taluk records, 11 cents of land in S. No. 20/9 is registered in the name of the school. The plaintiff has sought injunction in respect of the school properties also. The plaintiff ought to have impleaded the Government Officials as parties to the suit and that the suit is liable to be dismissed for non-impleading of necessary parties. In respect of the same schedule mentioned property, the plaintiff has filed another suit in O.S. No. 148 of 2001 against the Government Officials and that suit is still pending. In that suit, the present defendants have not been impleaded as parties. The present suit is filed only to grab the scheduled mentioned property and hence the defendants prayed for dismissal of the suit.

(vi) The Lower Court framed the following issues for consideration:

(a) Whether the plaintiff is in possession of the suit properties ?

(b) Whether the contention of defendants that 11 cents of land in S. No. 20/9 is registered in the name of the school is correct?

(c) Whether the contention of the defendant that the plaintiff has annexed the school property is correct?

(d) Whether the suit is bad for non-joinder of proper parties?

(e) Whether the plaintiff is entitled to the relief of permanent injunction ?

(f) To what relief the plaintiff is entitled to?

(vii) The husband of the plaintiff was examined as P.W.1 and three documents were marked on behalf of the plaintiff. On behalf of defendants, two witnesses were examined as R.W.1 and R.W.2 and Exs.R1 to R15 were marked. Out of 50 cents of land in Survey No. 20/9, the Lower Court held that the plaintiff is entitled to a decree of permanent injunction for 45 1/4 cents of land only and dismissed the suit in respect of 4 3/4 cents of land. Aggrieved by the judgment and decree for the remaining portion of 4 3/4 cents, the plaintiff preferred an appeal in A.S. No. 53 of 2004 on the file of Principal Sub court, Nagapattinam.

(viii) In the appeal, the plaintiff contended that the finding of the Lower Court that he has put up construction in the school property is not supported by any documentary evidence. He further contended that the finding of the Lower Court that the school building is located on the northern side of the boundary line marked as 'BC' in the sketch is erroneous. He further submitted that in the absence of examination of the third defendant, who has filed the written statement, the Court below ought to have rejected the oral and documentary evidence let in by R.W.1, second defendant. Exs.R1 to R15 are only copies of complaint sent against the plaintiff with an intention to grab the property. The Lower Court totally misdirected itself in rejecting the relief of injunction for the remaining 4 3/4 cents of land, on the ground that the school requires additional space for toilet and nutritious meal centre. The plaintiff further contended that if the Lower Court had come to the conclusion that the plaintiff has encroached upon the school property, then there

could only be a direction to remove the encroachment under due process of law. Therefore, the plaintiff prayed that the appeal may be allowed and the relief of permanent injunction be granted in respect of 4 3/4 cents of land.

(ix) The Appellate Court proceeded on the footing that the boundaries of the plaintiff's property of 50 cents have not been properly given by the plaintiff that he has not taken steps to identify the location of the property and in particular, the boundary between the school and the plaintiff's property. In the plaint annexed to the Commissioner's Report, the Appellate Court found that the plaintiff's daughter's house was located on the western side of the school building. The Appellate Court raised a doubt that the suit property was adjoining the school building. P.W.1, plaintiff's husband has deposed that the Revenue Authorities had given notice to the plaintiff to remove the encroachment and the same was challenged in this Court by way of a writ petition. D.W.2, Village Administrative Officer has deposed that the school is located in S. No. 20/9 and the same is also registered in the revenue records. He further deposed that the properties were measured and the extent of encroachment was also identified.

(x) In the absence of any appeal filed by the defendants as against the judgment and decree in respect of 45 1/4 cents of land, the Appellate Court came to the conclusion that the plaintiff has not approached the Court with clean hands and that the Lower Court ought not to have granted a decree for injunction. The Appellate Court found that inasmuch as the plaintiff has not taken any steps to measure the property by appointing an Advocate Commissioner, the judgment and decree rendered by the Lower Court in respect of 45 1/4 cents of land are liable to be set aside. The Appellate Court set aside the judgment and decree in toto, notwithstanding the fact that the appeal was filed by the plaintiff only in respect of 4 3/4 cents and remanded the matter to the trial Court for retrial and further ordered that that the properties should be measured by an Advocate Commissioner with the assistance of a Surveyor and that the parties be permitted to lead oral and documentary evidence. Taking note of the fact that the plaintiff has filed another suit in O.S. No. 148 of 2001 against the Government Officials for injunction in respect of the same property, the Appellate Court ordered joint trial of both the suits. Aggrieved by the order of remand and further direction, the plaintiff

has filed the present appeal.

3. Heard Ms. R.T. Shyamala, learned Counsel for the appellant and Mr. V. Raghupathi, learned Counsel appearing for respondents.

4. Learned Counsel for the appellant submitted that the appeal was filed only in respect of 4 3/4 cents of land in S. No. 20/9 and the Lower Court has already granted permanent injunction in respect of 45 1/4 cents of land. In the absence of any appeal filed by the defendants challenging the decree in respect of 45 1/4 cents of land, the Lower Court has erred in setting aside the entire judgment and decree. She further submitted that the decree in respect of 45 1/4 cents has become final and that the appellate court has no jurisdiction to reverse the judgment and remand the matter to the Lower Court.

Learned Counsel for the appellant further submitted that the finding of the appellate court that the plaintiff has not impleaded the proper parties for effective adjudication is also erroneous for the reason that the decree would bind only the parties in the suit and that the aggrieved persons have not come forward with any application to implead themselves in the suit nor they have prayed for a joint trial of both the suits. She also submitted that the appellate Court is only a subordinate court, which is not vested with the jurisdiction of transfer or to order joint trial of the suits under Section 24 C.P.C. Therefore, she submitted that the appellate Court has exceeded in its jurisdiction in ordering joint trial. She further submitted that the decision of the Trial Court is based on oral and documentary evidence adduced by parties and that the decree for permanent injunction granted by the Trial Court does not warrant any interference. Remanding the matter for fresh trial and for appointment of an Advocate Commissioner is wholly uncalled for and in any event, when the factual details are already available on record, the Appellate Court itself could have ordered for an appointment of an Advocate Commissioner, if so required and dispose of the appeal on merits. Finally, she submitted that the exercise of power of remand would only facilitate the defendants to fill up the lacuna in the suit and the same is not permissible in law.

5. In support of her contentions, learned Counsel for the appellant cited the following decisions:

(i) P. Purushottam Reddy and Anr. v. Pratap Steels Ltd. : [2002]1SCR586

(ii) Jayaraman v. Kumaran and Ors. 2002 (3) L.W. 743

(iii) Subbiah Konar and Ors. v. State of Tamilnadu through District Collector, Tirunelveli and Anr. : (2003)3MLJ524

(iv) S. Shanmugam v. S. Sundaram and Ors. 2005 3 L.W. 366

She submitted that the provisions under Order 41 Rules 23 to 29 C.P.C. do not inhibit the appellate Court from seeking further evidence or appointing an Advocate Commissioner, if necessary and there is no necessity to remand the matter back to the Lower Court, for that purpose.

6. Per contra, learned Counsel for defendants/respondents submitted that the plaintiff has filed two suits in respect of the same property, before the same Court, one against the defendants in the present suit and other against the Government Officials. He submitted that the plaintiff has attempted to annexe the school properties illegally.

Placing reliance on a decision of the Supreme Court in K. Muthuswami Gounder v. N. Palaniappa Gounder reported in : AIR 1998 SC3118 , learned Counsel for respondents/defendants submitted that the Lower Appellate Court has got powers under Order 41 Rule 33 C.P.C. to pass any decree or order even in the absence of an appeal filed by the defendant and such power can be exercised under exceptional circumstances. He submitted that since the plaintiff has not come out with the proper identity of the suit property, the direction of the appellate Court to appoint an Advocate Commissioner to measure the property with the assistance of a Surveyor would only help the Trial Court to render a clear finding as regards the possession and enjoyment of the suit property by the plaintiff. He further submitted that no prejudice would be caused, if an Advocate Commissioner is appointed and the properties in possession of the School as well as the plaintiff are identified. Learned Counsel for the defendants/respondents submitted that there is no error in the order of remand and prayed that the Civil Miscellaneous Appeal be dismissed.

7. Let us now examine some of the decisions cited by the counsel for the appellant and as to whether they are applicable to the facts of this case:

(i) In *P. Purushottam Reddy and Anr. v. Pratap Steels Ltd.* reported in : [2002]1SCR586 , the Supreme Court in paragraph 10 has held as follows:. It is only in exceptional cases where the Court may now exercise the power of remand de hors the Rules 23 and 23A. To wit, the superior Court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20, Rule 3 or Order 11, Rule 31 of the CPC and hence it is no judgment in the eye of law it may set aside the same and send the matter back for re-writing the judgment so as to protect valuable rights of the parties. An appellate Court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 C.P.C. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided.(ii) In *Jayaraman v. Kumaran and Ors.* reported in 2002 (3) L.W. 743, it is held that if all the materials were available before the learned Single Judge, the appellate Court in the first appeal has got every jurisdiction to go into the factual aspects and give a factual finding. It is further held that in the absence of appeal filed against the judgment and decree, the said judgment would operate as *res judicata* between the parties.

(iii) In *Subbiah Konar and three Ors. v. State of Tamilnadu through District Collector, Tirunelveli and Ors.* reported in : (2003)3MLJ524 , this Court in paragraph 14 has held as follows:

14. It is well settled that remand is not meant to give another chance to the parties to fill up the lacuna or to substantiate what the plaintiffs or defendants have failed to prove or establish. Remand is also not permissible to fill up the lacuna or to enable the parties to let in fresh evidence when the very plaintiffs who come forward with the suit have failed to establish their case.(iv) In *S. Shanmugham v. S. Sundaram and Ors.* reported in 2005 (3) L.W. 366, a Division Bench of this Court has held that the provisions under Order 41 Rules 23 to 29 C.P.C. are not a bar to take further evidence or to appoint a Commissioner, if so necessary, and to try the appeal and there is no necessity to remand the matter back to the Lower

Court. The Lower Appellate Court itself can try the matter after taking further evidence.

8. In a decision in *K. Muthuswami Gounder v. Palaniappa Gounder* reported in AIR 1998 SC 3118 : , the Apex Court has held as follows:

Order 41, R.33 enables the appellate Court to pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (i) the appeal is as to part only of the decree; and (ii) such party or parties may not have filed an appeal. The necessary condition for exercising the power under the Rule is that the parties to the proceeding are before the Court and the question raised properly arises of the lower Court and in that event the appellate Court could consider any objection to any part of the order or decree of the Court and set it right. No hard and fast rule can be laid down as to the circumstances under which the power can be exercised under Order 41 Rule 33 C.P.C., and each case must depend upon its own facts. The rule enables the appellate Court to pass any order/decreed which ought to have been passed. The general principle is that a decree is binding on the parties to it until it is set aside in appropriate proceedings, ordinarily the appellate Court must not vary or reverse a decree/order in favour of a party who has not preferred any appeal and this rule holds good notwithstanding Order 41, Rule 33, C.P.C. However, in exceptional cases the rule enables the appellate Court to pass such decree or order as ought to have been passed even if such decree would be in favour of parties who have not filed any appeal. The power though discretionary should not be declined to be exercised merely on the ground that the party has not filed any appeals.

9. In the case of *Banarsi and Ors. v. Ramphal* reported in : [2003]2SCR22 , their Lordships' of the Supreme Court have held as follows:

Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate Court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow.

The power is subject to atleast three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party.

10. In the present case, the school building is located in S. No. 20/9, measuring 11 cents, east to west 22 metres, south to north 20 metres. The measurement of the school building is 15 metres, east to west, 15 metres south to north. The remaining portion of 4 metres on the northern side and 7 metres on the western side is said to have been encroached upon by the plaintiff. The Tahsildar, Panchayat Union Commissioner and the Village Administrative Officer have measured the properties of the plaintiff and the school and thereafter, boundary stones have been laid and a compound has also been put up.

11. As per the orders of the Court, an Advocate Commissioner has already been appointed, who has inspected the disputed property and submitted his report along with the sketch. Ex.C1 is the Commissioner's Report dated 27.03.2001 and Ex.C2 is the Sketch in S. No. 20/9. The Advocate Commissioner in his report has stated that the suit property in S. No. 20/9 is located in Puttur Village. The learned Trial Judge has extracted the relevant portion of the Advocate Commissioner's report as follows:

Ex.R15, revenue records were filed to show that an extent of 11 cents in the suit S. No. 20/9 belongs to the school building. Document was also filed to show that they are in possession and enjoyment of 11 cents. In this case, from the report of the Advocate Commissioner, it is seen that the suit land is in Survey No. 20/9 in Puttur Village; that the suit land is situated on the south and east to 50 cents of plaintiff's land west to tank, north to the school and Velankanni Ammal's house; that Sivan Koil north street runs east-west; that the school building is situated on the north of this street; that abutting this, on the western side, the plaintiff's house is situated; that the school building is in two segments; that there is an inscription on the stone that the first segment of the school building was built in the year

1994-95; that there is a pathway of 6 ft on the eastern side to go to the backside; that through that pathway if one goes to a distance of 10 feet, there lies the second segment; and it was inscribed on the stone that the said segment was built in the year 1972; that the school building was divided into two parts and in one part there lies a godown for Nutritious Meal Centre; that on the Southern side there is door with a lock and in the backside, there is one window; that the next part comprises a class room; that on the southern side wall, two doors and one window were removed in order to fix a door to enable to go inside and the stones and window were removed; that portion was fenced with thorn and coconut leaves to prevent the entry; that through the house of the plaintiff which is on the western side of the school building alone, one can reach the northern wall of the school building or to reach the backside; that there is no other way; that on the western wall of the school building, there lies the plaintiff's cattle shed and the house of the plaintiff's son; that the house of the plaintiff is situated with the garden and there are many coconut trees and banana trees and plants;

12. Oral and documentary evidence has been let in by both parties to prove their respective possession of the land in dispute. There is also evidence of the learned Advocate Commissioner, who in his report, Ex.C1 has explained in detail about the location of the school building, giving the boundaries and explained the extent of land in possession of the plaintiff. It is evident from Ex.P14, about 4 3/4 cents of land said to have been encroached upon by the plaintiff on the northern side. In such circumstances, there are materials available before the Appellate Court and it has got jurisdiction to prove the factual aspects and give a finding as to whether the plaintiff is entitled to an injunction in respect of the remaining portion of the land in question, namely, 4 3/4 cents in S. No. 20/9. The decisions cited above do not restrain the Appellate Court to take further evidence or to appoint an Advocate Commissioner, if necessary and try the appeal, if there is any doubt regarding the extent of lands in possession of the contesting parties.

13. Order 41 Rule 23 contemplates remand only under the following circumstances:

(i) The Trial Court disposed of the case otherwise than on a preliminary point and

(ii) The decree is reversed in appeal and a retrial is considered necessary.

In cases where additional evidence is required to be taken, in the event of any one of the clause of Sub rule (1) of Rule 27 being attracted, such additional evidence, oral or documentary is allowed to be produced either before the appellate Court itself or by directing any Court subordinate to the appellate Court to receive such evidence and send it to the Appellate Court. The Courts have further held that only in exceptional cases, the power of remand can be exercised if the superior court finds that the judgment under the appeal has not been decided satisfactorily in the manner required by Order 20 Rule 23 or Order 11 Rule 31 C.P.C. and therefore, it is no judgment in the eye of law, and only under such eventuality, the appellate Court may set aside the same and remit the matter back for fresh trial, so as to protect the valuable rights of the parties. An appellate Court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 of the Civil Procedure Code. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, it should be avoided.

14. The Lower Court has considered the oral and documentary evidence let in by both parties and also the Advocate Commissioner's report. On the basis of the available materials, the Appellate Court itself can go into the factual aspects and give a specific finding as to whether the plaintiff is in possession of the remaining extent of 4 3/4 cents of land.

In a case of injunction, where a specific finding is given in respect of possession of a property and where a partial decree is given, the dismissal of the suit in the absence of an appeal filed by the defendant is erroneous. It is settled law that in a matter of injunction, the Appellate Court would not interfere with the finding, unless the Lower Court has acted unreasonably or ignored certain facts placed before the Court.

15. There is no quarrel over the decision reported in *K. Muthuswami Gounder v. N. Palaniappa Gounder* reported in : AIR 1998 SC3118 . However, the power of the Court under Order 41 Rule 33 is well accepted in the later decision in *Banarsi and Ors. v. Ramphal* reported in : [2003]2SCR22 , where the power can be exercised only subject to three limitations, namely,

(i) The power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court;

(ii) A claim given up or lost cannot be revived;

(iii) Such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party permitted to achieve a finality cannot be reversed to the advantage of such party.

16. In the instant case, it is a pure finding of fact regarding the extent of possession. The defendants who have suffered a decree and who have been enjoined from interfering with the possession of the land have not filed any appeal and that they allowed the decree regarding the possession of 45 1/4 cents of land to reach its finality. The finding of the Lower Court in respect of one portion of land is not so inseparably connected with the remaining portion. The finding of the Lower Court cannot be termed as inconsistent or contradictory or unworkable also. Only in a case, where the decree is interlinked and inseparable, then the decision rendered in the Lower Court can be interfered with, in the absence of an appeal.

17. In the present case, the Appellate Court has to exercise all the powers under Order 41 Rule 23 to do complete justice between the parties and it is purely discretionary. Inasmuch as adequate materials are available on record, the Appellate Court itself could have disposed of the appeal on merits without setting aside the entire judgment and decree of the Trial Court.

The Lower Appellate Court has also exceeded in its jurisdiction in ordering joint trial of the suits, in the absence of a specific power conferred on it under Section 24 C.P.C.

In view of the above discussion and the settled position of law, the judgment and decree passed in A.S. No. 53 of 2004, setting aside the entire decree of the Lower Court is without jurisdiction, and the same is set aside. The Appellate Court is directed to dispose of the appeal in the light of the above discussion and on the basis of the pleadings and evidence available on record in respect of the remaining 4 3/4 cents of land in S. No. 20/9, which is the subject matter of dispute

in the appeal.

The Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, connected V.C.M.P. No. 124 of 2006 is closed.

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