



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2017

CORAM

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A(MD)No.1096 of 2015

and

M.P.(MD)No.1 of 2015

1.Arputham(Died)

2.Rose Ilayanal Mary

3.A.Felicks Leo Rani

4.A.Britto

(second appellant already on record and

A3 and A4 are brought on Legal Representatives

of the Deceased 1st Appellant as per the Order of this

Court dated 14.11.2017 made in M.P.(MD).No.2 of 2015)

... Appellants

Vs.

Yagammal

... Respondent

PRAYER:- Civil Miscellaneous Appeal filed Order 43 Rule 1(u) r/w. Section.105 of Civil Procedure Code, against the judgment and decree dated 08.04.2015 made in A.S.No.38 of 2014, on the file of the Sub Court, Sivagangai, remanding the appeal suit and setting aside the judgment and decree of the learned District Munsif Court, Sivagangai, made in O.S.No.130 of 2012, dated 17.12.2013.

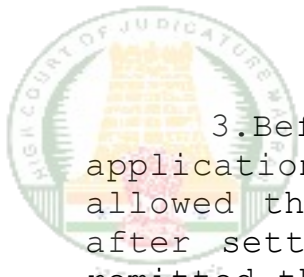
For Appellants : Mrs.K.R.Shiva Sankari

For Respondent : Mr.G.Prabhu Rajadurai

J U D G M E N T

Heard the learned counsel on either side.

2.The defendants in the suit have filed this Civil Miscellaneous Appeal questioning the order of remand made by the First Appellate Court. The respondent herein is the plaintiff in the suit. The suit was filed for declaration and injunction. The Trial Court found the issue regarding the relief of declaration in favour of the plaintiff. It however came to the conclusion that the plaintiff was out of possession. Therefore, the suit for consequential relief of injunction was held as not maintainable. In that view of the matter, the suit came to be dismissed. As per the order of the court, the plaintiff filed an appeal in A.S.No.38 of 2014, before the Sub Court, Sivagangai.



3. Before the First Appellate Court, the plaintiff filed an application for amending the plaint. The First Appellate Court allowed the amendment application for recovery of possession and after setting aside the judgment and decree of the Trial Court, remitted the matter to the file of the Trial Court.

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4. The learned counsel appearing for the respondent herein informed this Court that she would not press the first appeal and that she would file a fresh suit for recovery of possession in terms of the liberty given vide judgment and decree dated, 17.12.2013, in O.S.No.130 of 2012, on the file of the District Munsif Court, Sivagangai. It is of course open to the appellants herein to oppose the said suit as and when instituted, in accordance with law. The order dated 08.04.2015 made in A.S.No.38 of 2014, on the file of the Sub Court, Sivagangai, is set aside. The matter is remitted to the file of the First Appellate Court.

5. This Civil Miscellaneous Appeal is allowed as indicated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To,

1. The Subordinate Judge,
Sivagangai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.S.Srinivasa Raghavan, Advocate SR.No. 90165

+1cc to M/S.G.Prabhu Rajadurai, Advocate SR.No. 90055

C.M.A (MD) No.1096 of 2015

and

M.P. (MD) No.1 of 2015

28.11.2017

tsg

JM/JC/SAR 1/03.01.2018/2P/5C