



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1140 of 2015

and

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

S.Sam Davidson
rep. by the powerholder
D.Suresh

... Appellant/Respondent/Plaintiff

Vs.

Santhakumari ... Respondent/Appellant/1st Defendant

Prayer: Appeal filed under Order 43 Rule 1 (r) of C.P.C., to set aside the judgment and decree passed in A.S.No.35 of 2014 on the file of the District Judge, Kanyakumari at Nagercoil dated 16.06.2015 reversing the judgment and decree passed in O.S.No.115 of 2011 on the file of Sub Court, Padmanabhapuram dated 20.07.2012.

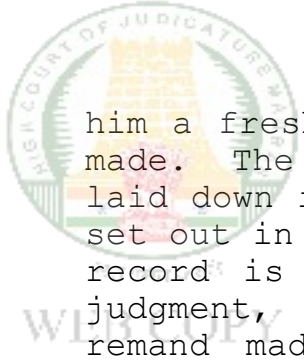
For Appellant : Mr.M.P.Senthil
For Respondent : Mr.D.Christenson Jugunu

JUDGMENT

The plaintiff in O.S.No.115 of 2011 on the file of the Sub Court, Padmanabhapuram has filed this civil miscellaneous appeal questioning the remand made by the first appellate Court vide judgment and decree dated 16.06.2015 made in A.S.No.35 of 2015 on the file of the District Judge, Kanyakumari District at Nagercoil.

2.The appellant herein filed O.S.No.115 of 2011 for demarcation of the suit property and for permanent injunction. The respondent herein entered appearance through the counsel, but, did not file any written statement. The said suit came to be decreed by judgment and decree dated 20.07.2012. The respondent herein filed A.S.No.35 of 2014. He has also filed I.A.No.27 of 2015 for adducing additional evidence. The lower appellate Court chose to remand the matter to the trial Court for giving an opportunity to the respondent herein to file written statement and give evidence in support of her case to arrive at a just decision. Therefore, the decision of the trial Court was set aside and the case was remanded.

<https://hcservices.courts.gov.in/hcservices> cannot approve the approach of the lower appellate Court. If the plaintiff had deliberately defaulted in filing written statement, he must suffer the consequence. In order to give



him a fresh lease of litigative life, an order of remand cannot be made. The first appellate Court cannot travel beyond the parameters laid down in Order 41 Rule 23 and Rule 23(A) of C.P.C. The mandate set out in Order 41 Rule 24 of C.P.C. is that where the evidence on record is sufficient to enable the appellate Court to pronounce judgment, the appellate Court is bound to do so. The order of remand made in this case is without jurisdiction. This Court therefore has to necessarily set aside the judgment and decree dated 16.06.2015 made in A.S.No.35 of 2015 on the file of the District Judge, Kanyakumari District at Nagercoil. The matter is remitted to the file of the lower appellate Court. The lower appellate Court is directed to dispose of A.S.No.35 of 2015 as expeditiously as possible on merits and in accordance with law.

4.This civil miscellaneous appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The District Judge,
Kanyakumari District at Nagercoil.

2.The Sub Court,
Padmanabhapuram.

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

+1cc to Mr.M.P.SENTHIL Advocate in SR. No. 83431

ARUL

JS/SV.MMS/SAR.2/9.11.2017/2P-5C

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