



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2017

CORAM :

WEB COPY

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

C.M.A. (MD) No.1146 of 2015

and

MP (MD) No.1 of 2015

Chinnasamy

... Appellant/Respondent/Plaintiff

**Vs.**

1.Sellappan

2.Arjunan

... Respondents/Appellants/Defendants

**Prayer:** This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of Civil Procedure Code against the judgment and decree of the Lower Appellate Court dated 03.08.2015 passed in A.S.No.2 of 2015 on the file of the Additional Subordinate Judge, Karur reversing the judgment and decree of the Trial Court dated 12.12.2012 passed in O.S.No.293 of 2011 on the file of the Principal District Munsif, Karur and remanding the suit for fresh disposal.

For Appellant

: Mr.V.Balaji

For Respondents

: Mr.V.Perumal for R1 & R2

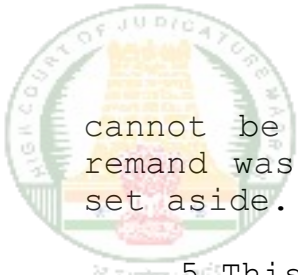
### **JUDGMENT**

Heard the learned counsel on either side.

2.The plaintiff in the suit has filed this Civil Miscellaneous Appeal questioning the order of remand made by the First Appellate Court.

3.The appellant herein filed O.S.No.293 of 2011 seeking the relief of declaration and permanent injunction in respect of the suit property. The suit was decreed. The title of the plaintiff over the six cents of lands and eight Palmyra trees was declared and consequential injunction was also granted. Aggrieved by the same, the defendant filed A.S.No.2 of 2015 on the file of the Additional Subordinate Judge, Karur.

4.The First Appellate Court noted that there is no clarity with regard to the location of the Palmyra trees. It was observed that it is not known as to whether the land of which the trees are located belongs to the plaintiff or the defendant. It was observed that unless the jurisdictional Tahsildar is examined, proper finding



cannot be arrived at. In that view of the matter, an order of remand was made and the judgment and decree of the trial Court was set aside.

5. This Court is of the view that the Lower Appellate Court itself can if circumstances warrant permit the parties to adduce additional evidence. It is not necessary to make an order of remand for that purpose. The circumstances in which the remand can be made are clearly set out under Order 41 Rule 23 and Rule 23(A) of C.P.C. Those circumstances are clearly absent in this case.

6. Therefore, I set aside the order of remand made by the First Appellate Court vide judgment and decree dated 03.08.2015 in A.S.No.2 of 2015 on the file of the Additional Subordinate Judge, Karur. The matter is remanded to the file of the First Appellate Court for fresh disposal of the first appeal. The First Appellate Court is directed to dispose of the appeal in accordance with law within a period of three months from the date of receipt of a copy of this order. This Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

**To**

1. The Additional Subordinate Judge, Karur.
2. The Principal District Munsif,  
Karur.

**Copy To:-**

The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.

+ 1 CC TO Mr.V.PERUMAL, ADVOCATE IN SR No. 85153

SKM

TE/JC/SAR-4 : 29/11/2017 : 2P/5C

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MP (MD) No.1 of 2015  
02.11.2017