



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.219 of 2017

and

C.M.P. (MD) No.2598 of 2017

1.Kanagavalli
2.Balasundaram
3.Mahendran
4.Kannadasan

... Appellants

Vs.

Vasudevan

... Respondent

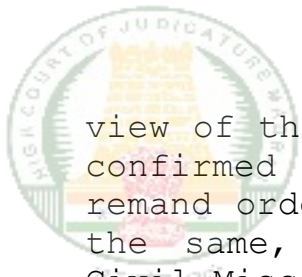
Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 26.11.2015 passed in A.S.No.24 of 2014 in O.S.No.15 of 2004 on the file of the Additional Sub Court, Kumbakonam against the Judgment and Decree dated 30.01.2013 passed in O.S.No.15 of 2004 on the file of the District Munsif cum Judicial Magistrate, Pabanassam.

For Appellants : Mr.G.Prabhu Rajadurai
For Respondent : Mr.V.Janakiramulu

JUDGMENT

The respondent herein filed O.S.No.15 of 2004 on the file of the District Munsif Court, Pabanassam. It was a suit for injunction. There are three items set out in the suit schedule. The learned Trial Munsif, decreed the suit as prayed for.

2. Aggrieved by the same, the defendants/appellants herein filed A.S.No.24 of 2014 before the Additional Sub Court, Kumbakonam. The First Appellate Court was of the view that the finding of the Trial Court and granting of relief in respect of Item No.1 of the suit schedule is correct. But, as regards, Item Nos. 2 and 3, the first appellate Court noted that no proper finding has been rendered by the trial Court and therefore, the matter should be remanded to the file of the trial Court. In that



view of the matter, the judgment and decree of the trial Court was confirmed as regards the Item No.1 of the suit schedule and remand order was made in respect of other two items. Aggrieved by the same, the defendants/appellants herein have preferred this Civil Miscellaneous Appeal.

WEB COPY

3. Considering the facts and circumstances of the case, I am of the view, that the evidence on record is sufficient to dispose of the First Appeal. The Appellate Court must have disposed of the appeal in its entirety. The circumstances under which the remand order can be made is set out in Order 41, Rule 23 and 23A of C.P.C. Those circumstances are clearly absent in this case. If the trial Court had not rendered any finding as regard Item No.2 and 3, nothing stopped the First Appellate Court from considering the evidence on record and rendering appropriate findings in that regard. There was no justification in simply remanding this case. I, therefore, set aside the order dated 26.11.2015 in A.S.No.24 of 2014 on file of the Additional Sub Court, Kumbakonam.

4. This Civil Miscellaneous Appeal stands allowed, accordingly. The matter is remitted to the file of the Additional Sub Court, Kumbakonam for disposal of the First Appeal afresh and in accordance with law. No costs. Consequently, C.M.P.(MD) No.2598 of 2017 is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Subordinate Judge,
Kumbakonam.
2. The District Munsif cum Judicial Magistrate,
Pabanasam.

Copy To:-

The Section Officer, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- + 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 92441
- + 1 CC TO Mr.V.JANAKIRAMULU, ADVOCATE IN SR No. 92831

KMI

TE/KKR/SAR-3 : 09/05/2018 : 2P/7C