



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2017

CORAM

WEB COPY

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

C.M.A(MD)No.222 of 2017

and

C.M.P. (MD)No.2601 of 2017

1.Rajendran
2.Natesan
3.Jeyamani
4.Hemalatha
5.Narmadha

... Appellants /Appellants/Defendants

Vs.

1.Manoharan
2.R.Samiappean

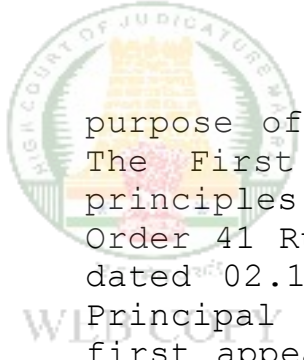
... Respondents/Respondents/Plaintiffs

PRAYER:- Civil Miscellaneous Appeal filed Order 43 Rule 1 of Civil Procedure Code, to set aside the order of remand dated 02.12.2016 passed in A.S.No.4 of 2016 on the file of Principal District Judge, Karur reversing the judgment and decree dated 07.12.2015 passed in O.S.No.67 of 2012 on the file of Principal Sub-Court, Karur.

For Appellants :Mr.M.P.Senthil
For Respondents :No appearance

J U D G M E N T

The defendants in the suit has filed this Civil Miscellaneous Appeal, questioning the order of remand. The suit filed by the respondents herein was one for partition. Preliminary decree was passed in the suit on 07.12.2015. The appellants herein filed A.S.No.4 of 2016, Questioning the passing of the said preliminary decree. The First Appellate Court noted that necessary parties were not impleaded by the plaintiffs and that the entire estate was also not included in the suit schedule. In order to enable the plaintiffs to implead the necessary parties and to include the left out items, the matter was remitted to the file of the Trial Court. The judgment and decree passed in the Trial Court was also set aside.



purpose of enabling the defaulting party to fill up the lacunae. The First Appellate Court did not keep in view the settled principles of law which govern the power to remand as laid down in Order 41 Rule 23 and Rule 23 A of Civil Procedure Code. The order dated 02.12.2016, made in A.S.No.4 of 2016, on the file of the Principal District Court, Karur, is set aside. Accordingly, the first appeal is remitted to the file of the Appellate Court. The First Appellate Court shall dispose of the appeal in accordance with law.

3.This Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To,

1. The Principal District Judge, Karur.
2. The Principal Sub Court, Karur.

Copy to

1. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.
2. R.Samiappan,
S/o.Late M.Ramasamy Goundar,,
No.499/3, Moolkkattanur,
Sanapiratti Village,
S.Vellalapatti Post,
Karur Taluk.

+1cc to Mr.M.P.Senthil, Advocate Sr.No.90024

PSD

VB/SV/MMS/SAR4/09/01/2018/2P/7C

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