



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2017

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.M.A. (MD) No.1218 of 2015

and

MP (MD) No.1 of 2015

1.Seethalakshmi
2.Backialakshmi
3.Sudharani
4.Ramabai Saraswathi

... Appellants/Respondents/
Plaintiffs

Vs.

Ramachandran

... Respondent/Appellant/
Defendant

Prayer: This Appeal is filed under Order XLIII Rule 1(u) of Code of Civil Procedure, to set aside the order of remand dated 18.04.2015 rendered in A.S.No.53 of 2013 on the file of the Principal Subordinate Judge, Madurai by setting aside the decree and judgment dated 22.01.2013 rendered in O.S.No.443 of 2008 on the file of the District Munsif cum Judicial Magistrate of Vadipatti.

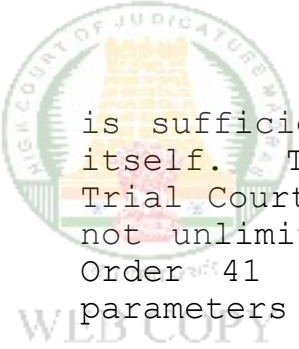
For Appellants : Mr.N.Subramanian
For Respondent : No appearance

JUDGMENT

The appellants herein filed O.S.No.443 of 2008 on the file of District Munsif Court, Vadipatti seeking the relief of recovery of possession.

2. The suit was partly decreed by judgment and decree dated 22.01.2013. Aggrieved by the same, the defendant filed A.S.No.53 of 2013. The First Appellate Court by order dated 18.04.2015 set aside the judgment and decree of the Trial Court and remanded the matter back to the file of the Trial Court. The Lower Appellate Court adopted such a course on the ground that the Trial Court did not render any finding on a document marked by the defendant.

3. If the Trial Court had not rendered a finding on a relevant point, it is open to the Appellate Court to do so. An appeal is a continuation of the original proceeding. If the evidence on record



is sufficient, the First Appellate Court ought to render judgment itself. The reason for remanding the matter to the file of the Trial Court is absolutely incorrect. The power to order remand is not unlimited. It is circumscribed by the parameters set out in Order 41 Rule 23 and 23(A) of Code of Civil Procedure. Those parameters are absent in this case.

4. I therefore set aside the judgment and decree dated 18.04.2015 made in A.S.No.53 of 2013 on the file of the Principal Subordinate Court, Madurai. The matter is remitted to the file of the First Appellate Court. The First Appellate Court shall hear and dispose of the first appeal expeditiously.

5. This Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Madurai.

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

3. Ramachandran,
S/o.Chidambaram Pillai,
Kuttimeikanpatti Village,
Alanganallur Post,
Vadipatti Taluk,
Madurai District.

+ 1 CC TO Mr.N.SUBRAMANIAN, ADVOCATE IN SR No. 84431

SKM

TE/SV-MMS/SAR-2 : 28/11/2017 : 2P/5C

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