



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.1306 of 2016
and
C.M.P. (MD) .No.11189 of 2016

Chittu Kala ... Plaintiff/Respondent/Appellant
Vs.

1.Palaniappan

2. Vairam ... Defendants/Appellants/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Order XLIII Rule 1 CPC, to set aside the Remand order and Decreetal Order dated 29.08.2016 in A.S.No.138 of 2008 on the file of learned Subordinate Judge, Pudukottai, modifying the Order and Decreetal order dated 31.07.2008 in O.S.No.64 of 2008 on the file of learned District Munsif, Pudukottai and allow the Civil Miscellaneous Appeal.

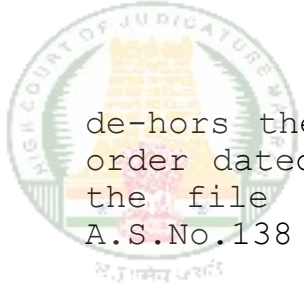
For Appellant : Mr.C.Mahadevan
for M/s.AL.Ganthimathi

For Respondents : No appearance

JUDGMENT

The appellant in this Civil Miscellaneous Appeal filed O.S.No.64 of 2008 on the file of the District Munsif Court, Pudukottai, seeking the relief of permanent injunction. The suit property is a petroleum outlet. The Trial Court by judgment and decree dated 31.07.2008 decreed the suit as prayed for. Questioning the same, the defendants filed A.S.No.138 of 2008 before the Sub Court, Pudukottai. The First Appellate Court allowed the appeal and set aside the judgment and decree of the Trial Court and remanded the matter to the Trial Court. Questioning the same, this Civil Miscellaneous Appeal has been filed by the plaintiff.

2.The learned counsel appearing for the appellant pointed out that an order of remand cannot be made for the asking. It must satisfy the parameters set out under Order 41 Rule 23 and Rule 23 (A) of C.P.C. In this case after setting out the antecedent facts and rival contentions in paragraph 10, the Lower Appellate Court has merely observed that the defendants could be given one more opportunity to adduce further evidence. This is not a justification for remanding the matter. The power of remand has been exercised



de-hors the statutory provisions. In this view of the matter the order dated 29.08.2016 stands set aside. The matter is remitted to the file of the First Appellate Court which shall dispose of A.S.No.138 of 2008 as expeditiously and in accordance with law.

3.This Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Pudukottai.
- 2.The District Munsif, Pudukottai.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1cc to M/s.AL.Ganthimathi, Advocate, SR.No.92667.

C.M.A. (MD) No.1306 of 2016
12.12.2017

tsg

RAM/SKN RSK/SAR 3/03.07.2018/2P/6C