



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1223 of 2015

and

M.P. (MD) .No.1 of 2015

Muniasamy Naidu (died)

1.Gunasekaran @ Kannan
2.Jamuna
3.Sulochana
4.Thayana Lakshmi
5.R.Sriram

... Appellants/Appellants/
Defendants (LRs of Muniasamy Naidu)

Vs.

A.Sethukrishnan

... Respondent/Respondent/Plaintiff

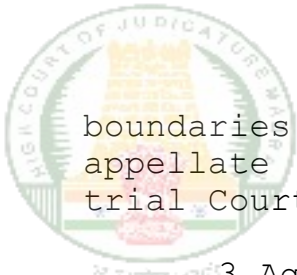
Prayer: Appeal filed under Order 43 Rule 10 of Civil Procedure Code, against the remand order of judgment and decree passed in A.S.No. 20 of 2010 on the file of Sub Court, Srivilliputtur, dated 25.03.2015 against the Judgement and decree passed in O.S.No.270 of 2004 on the file of Principal District Munsif Court, Srivilliputtur, dated 09.12.2009.

For Appellants : Mr.A.Arumugam for Mr.K.Sudalaiyandi
For Respondent : Mr.A.Sivaji

JUDGMENT

The legal representatives of the original defendants have filed this civil miscellaneous appeal, questioning the order of remand made by the first appellate Court.

2.The respondent herein filed O.S.No.270 of 2004 on the file of the Principal District Munsif Court, Srivilliputhur, seeking the relief of declaration and mandatory injunction. The said suit was decreed. Aggrieved by the same, the present appellant filed A.S.No.20 of 2010 before the Subordinate Court, Srivilliputhur. The lower appellate Court had taken the view that the report submitted by the advocate Commissioner was not correct. Therefore, to enable the plaintiff to take steps either to re-issue commissioner warrant or to file a fresh commission application so as to fix the



boundaries of both parties, the matter was remanded. The lower appellate Court set aside the judgment and decree passed by the trial Court and remitted the matter to the file of the trial Court.

3. Aggrieved by the same, the present civil miscellaneous appeal has been filed.

4. This Court is of the view that very same exercise could be taken before the first appellate Court itself. For the purpose of reissuing the warrant to the commissioner or appointment of a new advocate Commissioner, an order of remand need not be made. Therefore, the order dated 25.03.2015 made in A.S.No.20 of 2010 on the file of the Subordinate Court, Srivilliputhur, is set aside and the matter is remitted back to the file of the first appellate Court. All issues are left open. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected M.P. (MD).No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

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

+ 1 CC TO Mr.K.SUDALAIYANDI, ADVOCATE IN SR No. 87869

+ 1 CC TO Mr.A.SIVAJI, ADVOCATE IN SR No. 87841

VSG/DSS

TE/JC/SAR-1 : 06/03/2018 : 2P/7C

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M.P. (MD) .No.1 of 2015
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