



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA(MD)No.151 of 2014

and

MP(MD)No.1 of 2014

Pappayee

... Appellant/ Respondent/Defendant

Vs.

G.Karthikeyan

... Respondent/Appellant/Plaintiff

Prayer: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (r) of Civil Procedure Code, against the judgment and decree passed in A.S.No.120 of 2010 on the file of Additional Sub Court, Karur dated 13.09.2013 reversing the judgment and decree passed in O.S.No.521 of 2008 on the file of Principal District Munsif Court, Karur, dated 26.10.2010.

For Appellant

: Mr.M.P.Senthil

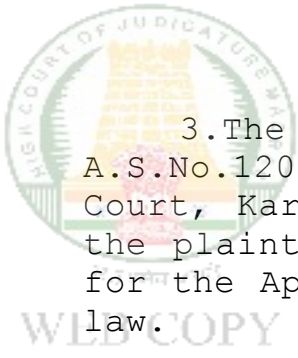
For Respondent

: Mr.V.Meenakshi Sundaram
for Mr.M.Bindran

JUDGMENT

The appellant in this Civil Miscellaneous Appeal is the defendant in OS.No.521 of 2008 on the file of Principal District Munsif Court, Karur. The respondent herein filed the said suit seeking the relief of declaration and recovery of possession. The appellant herein filed his written statement pointing out that necessary parties have not been impleaded. However, the plaintiff did not file any application for impleading the such parties. The Trial Judge by judgment and decree dated 26.10.2010 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.120 of 2010 before the Additional Sub Court, Karur. The First Appellate Court mechanically set aside the judgment and decree of the Trial Court and remitted the matter to the file of the Trial Court so as to enable the plaintiff to implead the necessary parties.

2.The learned counsel appearing for the appellant in CMA pointed out that the Appellate Court cannot remand the matter to enable the parties to fill up lacunae. The First Appellate Court did not bear in mind the principles of law setting out the circumstances under which alone an order of remand can be made. The order of remand has been passed for the asking. The reason assigned by the first appellate court are unsustainable in law. In this case, there is no explanation as to why steps were not taken before the trial court to implead the necessary parties.



3.The impugned order of remand is therefore set aside. A.S.No.120 of 2010 is remitted to the file of the Additional Sub Court, Karur for disposal in accordance with law. It is open to the plaintiff to file such application as he deems fit and it is for the Appellate Court to dispose of the same in accordance with law.

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

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The Additional Sub Judge, Karur.

2.The Principal District Munsif, Karur.

3.The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.M.P.Senthil. Advocate Sr.No.93250

+1cc to Mr.M.Bindran, Advocate Sr.No.93223

skm

VB/SV/MMS/SAR1/06.06.2018/2P/7C

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