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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.167 of 2014

and

M.P.(MD)No.1 of 2014

1.K.Murugesan

2.K.Jayakodi

... Appellants/Appellants

Vs.

S.Indira

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Order 43 R 1 (u) read with Section 100 of C.P.C, to set aside the judgment and decree dated 12.11.2013 in A.S.No.26 of 2013 on the file of Additional Subordinate Judge, Karur and allow the above Civil Miscellaneous Appeal.

For Appellants : Mr.P.Thiagarajan

For Respondent : Mr.D.Nallathambi

JUDGMENT

The appellants in the Civil Miscellaneous Appeal filed O.S.No.441 of 2011 on the file of District Munsif Court, Karur. The first appellant is the son of the second appellant Jayakodi, W/o.Kandasamy. Kandasamy is the brother of one Subramani. He is the husband of the respondent Indhira. The suit schedule relates to three items of property. The first two items were purchased jointly by Kandasamy and Subramani. The third item is said to be ancestral property. Kandasamy had executed a sale deed in the name of first plaintiff Murugesan, Ex.A2, on account of which the present dispute had occurred. Claiming absolute title over the three items, they filed O.S.No.441 of 2011 against the respondent herein.

2.The suit was filed initially only as a suit for injunction. Since the respondent raised title dispute, the said prayer was amended as one for declaration and injunction. The learned Trial Judge, by judgment and decree dated 06.02.2013 decreed the suit as prayed for.



3. Aggrieved by the same, the respondent herein filed A.S.No.26 of 2013 before the Additional Sub-Court, Karur. The case of the respondent herein was two fold. According to her, she has right of maintenance against the property owned by her husband Subramani. Hence, in terms of Section 39 of Transfer of Property Act, she is entitled to enforce right of maintenance.

4. The plaintiffs herein would plead that they did not have knowledge of the right of the respondent. As already pointed out Subramani is none other than the own brother of Kandhasamy, father of the First Plaintiff, and husband of the second Plaintiff. She would further contend that the three items originally belonged to Muruthapillai. Muruthapillai had three children, Kandhasamy, Subramani and Palanimmal. The said Palaniammal is the mother of respondent herein. She therefore, contends that the suit is hit by non joinder of necessary party. The First Appellate Court accepted the said statement that suit is hit by non joinder of Palaniammal and chose to set aside the judgment and decree passed by the Trial Court and remanded the matter so as to enable the plaintiff to implead the said Palaniammal.

5. This order of remand is under challenge in this appeal. The learned counsel appearing for the appellants submitted that there may not be any dispute with regard to maintainability of this Civil Miscellaneous Appeal by placing reliance on the decision of the Honourable Supreme Court reported in 2012(3) CTC 410 Jegannathan Vs. Raju Sigamani & another.

6. The Honourable Supreme Court held that an order of remand passed under Order 43, Rule 23-A is amenable to appeal under Order 43, Rule 1(u) C.P.C. However, such an appeal can be had only on the ground enumerated in Section 100 of C.P.C.

7. The learned counsel for the appellants would therefore raise a substantial question of law namely whether the first appellate Court was correct in remanding the matter on the ground of non joinder of the said Palaniammal. He drew the attention of the Court to the fact that in the written statement, the respondent herein had not pleaded that Palaniammal is a necessary party. As per Order 1 Rule 13 of C.P.C all objection on the ground of non joinder of parties should be taken at the earliest possible opportunity. If such an objection is not taken, at the earliest point of time, the respondent herein, cannot later raise the plea of non joinder. Therefore, this Substantial Question of Law raised has to be necessarily answered in favour of the appellants.

8. I therefore set aside the judgment dated 12.11.2013 in A.S.No.26 of 2013 on the file of Additional Subordinate Judge, Karur. This C.M.A.(MD)No.167 of 2014 stands allowed. A.S.No.26 of 2013 is remanded to the file of the Additional Subordinate Judge, Karur, to be decided afresh in accordance with law, after hearing



both the parties. This Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CO)

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To

The Additional Subordinate Judge, Karur.

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V.R.Section,
Madurai Bench of Madras High Court,
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+ 1 CC TO Mr.P.THAGARAJAN, ADVOCATE IN SR No. 92406
+ 1 CC TO Mr.D.NALLATHAMBI, ADVOCATE IN SR No. 92416

PSD

TE/SV/SAR-3 : 29/06/2018 : 3P/6C

C.M.A. (MD) No.167 of 2014
12.12.2017