



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1401 of 2015

and

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

1.Seeniappan

2.Pandian

... Appellants/Respondents 1 and 2/
Defendants 1 and 2

Vs.

1.Kaamulu Ammal

2.Jakkammal

3.Kunjalu Jakkammal

.. Respondents 1 to 3/Appellants/
Plaintiffs

4.Pappammal

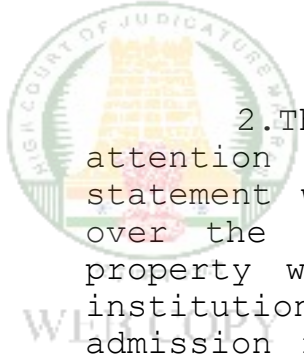
.. 4th Respondent/3rd Respondent/
3rd Respondent

Prayer: The appeal filed under Order 43 Rule 1 of the Civil Procedure Code, against the Judgment and Decree of the Lower Appellate Court dated 20.03.2015 passed in A.S.No.24 of 2014 on the file of the Principal District Sessions Judge, Theni, reversing the Judgment and Decreetal order of the trial Court dated 21.08.2014 passed in O.S.No.116 of 2008 on the file of the Subordinate Judge, Theni and remanding the suit for fresh disposal.

For Appellants	: Mr.R.Subramanian
For R.1 to R.3	: Mr.A.Sivaji
For R.4	: No appearance

J U D G M E N T

The defendants 1 and 2 are the appellants in this Civil Miscellaneous Appeal. The respondents 1 to 3 herein filed O.S.No.116 of 2008 on the file of the Sub Court, Theni, seeking the relief of declaration and permanent injunction. The suit was dismissed by judgment and decree dated 21.08.2014. Aggrieved by the dismissal of the suit, the plaintiffs filed A.S.No.24 of 2014 before the Principal District Sessions Judge, Theni. The Lower Appellate Court noted that the suit came to be dismissed only because, it was found that the defendants 1 and 2 are in possession and enjoyment of the suit property. In that view of the matter, the judgment and decree of the trial Court was set aside and the matter was remitted to the file of the trial Court. This order of remand is under challenge in this appeal.



2. The learned counsel appearing for the appellants drew the attention of this Court to the averment made in the written statement wherein they had categorically asserted their possession over the suit property. They have pointed out that the suit property was transferred to the third party, even prior to the institution of the suit. My attention was also drawn to the admission made by P.W.1 during cross-examination that he was not aware of who is in possession of the suit property. Therefore, the plaintiff had consciously proceeded with the suit for permanent injunction alone without seeking the relief of recovery of possession. The power of the first appellate Court to remand the matter is not absolute. Even though the expression (i.e) "in the interest of justice" is very much present, the power to order remand, can be invoked only if the circumstances set out in the Order 41 Rules 21 and 23 CPC are present. Those circumstances are clearly absent in this case.

3. I am therefore of the view that the order dated 20.03.2015 remanding the matter to the trial Court is liable to be set aside and is accordingly set aside. A.S.No.24 of 2014 is remitted to the file of the Principal District Sessions Judge, Theni for dispose of in accordance with law. All the issues are left open. Accordingly, the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, M.P(MD).No.1 of 2015 is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Sessions Judge, Theni
2. The Subordinate Judge, Theni

Copy to:

The Section Officer, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.R.Subramanian, Advocate SR.No. 90416
+1cc to M/S.A.Sivaji, Advocate SR.No. 90193

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JM/SV MMS/SAR 1/23.03.2018/2P/7C