



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.16 of 2015

and

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

P.Paranjothi .. Appellant/4th Respondent/4th Defendant

Vs.

1.R.Joseph

2.R.Vedhamuthu

..Respondent 1 & 2/Appellants 1 & 2/
Plaintiffs 1 & 2

R.Arockiasamy (Died)

3.John Peter

4.Therasammal Shanthi

5.R.Arulayee

6.Minor A.Nisha

7.Minor A.Asha

(R1 and R2 through the power
agent, the third respondent)(Minors RR6 and 7 represents
through their mother and
guardian, the 5th respondent)..3rd Appellant/3rd defendant
..3rd Respondent/4th Appellant/4th defendant... Respondents 4 to 7/
Appellant 4 to 7

L.Rayappan @ Rayer Udaiyar (Died)

8 R.Rajasekaran

9 A.Arokiyanathan

..1st Respondent/1st Defendant...Respondents 8 & 9/Defendants 2 & 3/
Defendants 2 & 3

Prayer: Civil Miscellaneous Appeal is filed under Order 43, Rule 1, Clause (u) of the Code of Civil Procedure 1908, to set aside the order of remand passed in A.S.No.18 of 2013 dated 16.09.2014 on the file of the District Judge, Sivaganga and dismiss the appeal in A.S.No.18 of 2013 on the file of the District Judge, Sivagangai.

For Appellant

: Mr.R.Sundar Srinivasan

For Respondents

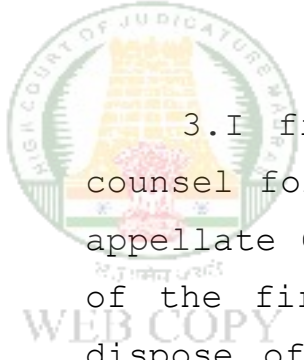
: Mr.V.R.Shanmuganathan,
for RR1 to 3, 4, 6 & 7

No Appearance for RR5, 8 & 9

JUDGMENT

The respondents 1 to 3 herein filed O.S.No.115 of 2010 on the file of the Sub Court, Devakottai seeking the relief of partition and other reliefs against the appellant herein and three others. The suit was dismissed vide judgment and decree dated 04.01.2013. Aggrieved by the same, the plaintiffs filed A.S.No.18 of 2013 before the District Court, Sivaganga. During the pendency of the first appeal, one Arul Raj filed I.A.No.40 of 2014 for impleading himself. The said Arulraj would impeach the sale made in favour of the present appellant Paranjothi. The present appellant filed a detailed counter affidavit in the said I.A. The lower appellate Court for reasons best known did not choose to dispose of the said I.A. before taking up the first appeal for final hearing. The first appellate Court took the view that the proposed party had raised certain triable issues. In that view of the matter, the order of remand was made. The judgment and decree of the trial Court was set aside. The first appellate Court also directed that the impleading petition filed by the said Arulraj would also be disposed of by the trial Court. It is this that is under challenge in this appeal.

2.The learned counsel for the appellant in this civil miscellaneous appeal would submit that the order of remand made by the first appellate Court is patently illegal. The circumstances set out under Order 41 Rule 23 and 23 A of C.P.C. for making an order of remand are not present in this case. The first appellate Court chose to remand the matter at the instance of a person, who was a stranger to the proceedings in the first instance. More than anything else even without taking a final decision in the impleading petition filed by the said Arulraj, the order of remand has been made.



3.I find force in the said submission made by the learned counsel for the Appellant. The order of remand made by the first appellate Court is set aside. The matter is remanded to the file of the first appellate Court. The first appellate Court shall dispose of A.S.No.18 of 2013 in accordance with law. The first appellate Court shall take up I.A.No.40 of 2015 filed by the said Arulraj and dispose of the same before taking up A.S.No.18 of 2013 for final hearing. It goes without saying that the appellant shall be heard before disposing of the said I.A.No.40 of 2014.

4.This civil miscellaneous appeal is allowed with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

1.The District Judge, Sivagangai

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

+1 cc to MR.R.SUNDAR SRINIVASAM, Advocate SR.No.91303

+1 cc to MR.V.R.SHANMUGANATHAN, Advocate SR.No.91829

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