



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2017

CORAM

WEB COPY

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

C.M.A(MD)No.624 of 2017
and
CMP(MD)No.6511 of 2017

1.Sundaram
2.Gracy
3.Geetha
4.Vinu
5.Renganadhan
6.Selvaraj
7.Ambika
8.Anilprabin
9.Anisha
10.Asha
and

... Appellants / Respondents 5, 11 to 13,15,16
56 to 59/D7, D15, D16, D17, D19 and D20

Vs.

1.Daisy
Kutti Amma (died)
2.Neelakumari
3.Nishkalankam
Murugesu Pillai (died)
Natarajan (died)
4.Rajayyan
Pooradan (died)
5.Thankamony) (
6.Chellaswamy) (

... 1st Respondent / Appellant / Plaintiff

... R2/R2/D2
... R3/R3

.. R4/R7/D10

.. R5&R6/R9 & R10/D12 & D13

Retnasamy (died)
7.Chempakam Amma
8.Sreekanteswari
9.Thulasi Sreekanteswari
10.Ebanezer,
11.Kosalai
12.Vargheese
Lohidasan (died)
13.Bhaskaran
14.Lakshmi
15.Sreeleswari
16.Monikandan
17.Selvi
18.Datheesh

... R7 to R12/R17 to R22/D22 to D24, D26,
D28, D29



19.Jasmin Soba
20.Joseph Soja
21.Rajula Chandran
22.Vijayan
23.Ayyalingam
24.Kasthuri
25.Prabhakaran
26.Saradha
27.Bindhu
28.Saji
29.Nirmala
30.Ayyappan
31.Monkandan
32.Jayanthi
33.Pitchai
34.Apsara
35.Madhavi Amma
36.Sadanadan
37.Neelambaran
38.Sreekandeswaradhas
39.Ganeshkumar
40.Sarasamma
41.Rathika
42.Akhila
43.Balasankar
44.Muhammed Pious

... Respondents 13 to 44 /
Respondents 24 to 55 / D31 to D35, D27 to
D47, Lrs of D11, D30, D6 and D8

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule (1) (u) of Code of Civil Procedure, against the fair and decretal order in A.S.No.46 of 2011 and Cross Appeal on the file of Camp Court Judge of Kuzhithurai dated 03.02.2017 reversing the Judgment and decree in I.A.No.467 of 2004 in O.S.No.410 of 2004 dated 23.09.2010 on the file of First Additional District Munsif Court, Kuzhithurai.

For Appellant	: Mr.V.M.Balamohan Thampi
For R-1 (Caveator)	: Mr.R.Nandakumar
For R-4	: Mr.N.Dilipkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Appellants / Respondents 5, 11 to 13, 15, 16 and 56 to 59 against the fair and decretal order in A.S.No.46 of 2011 and Cross Appeal on the file of Camp Court Judge of Kuzhithurai dated 03.02.2017 reversing the Judgment and decree in I.A.No.467 of 2004 in O.S.No.410 of 2004 dated 23.09.2010 on the file of Additional District Munsif Court, Kuzhithurai.

2. Heard the learned counsel for the appellants and the learned counsel for the respondents 1 and 4 and also perused the materials



available on record.

3.The only issue, which has to be decided by this Court is whether the remand by the lower Appellate Court is right or wrong, without advertting to the merits of the matter.

4.Today, when the matte came up for hearing, the learned counsel for the first respondent/plaintiff would submit that he does not have any objection for setting aside the order of remand, but prays for a direction to the trial Court to dispose of the appeal within a time frame, for which, the learned counsel for the appellants has also got no objection.

5.The learned counsel for the appellants has relied on two Judgements of this Court in **S.SHANMUGHAM v. S.SUNDARAM AND OTHERS** reported in **2005 (2) MLJ 552** and in **ARULMIGU CHOKKANATHASWAMY THIRUKOVIL v. S.J.DHARMARAJ AND OTHERS** reported in **2011 (5) L.W. 836**, wherein it has been held that only in exceptional cases where the judgement of the trial Court is wholly unintelligible or incomprehensible, the Appellate Court can remand the suit for fresh trial.

6. At this juncture, the order of the remand is set aside and a direction is given to the lower Appellate Court to dispose of the appeal. Without advertting into the merits of the case, the parties are at liberty to make their submissions before the Appellate Court. The Appellate Court shall proceed with the matter and dispose of the same, within a period of six months from the date of receipt of a copy of this order.

7.This Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To,

1. The Camp Court Judge of Kuzhithurai.
2. Additional District Munsif Court, Kuzhithurai.

+1cc to Mr.N.DILIP KUMAR Advocate in SR. NO.71919

+1cc to Mr.R.NANDAKUMAR Advocate in SR. No.72132

+1cc to Mr.V.M.BALA MOHAN THAMPI Advocate in SR. No.72228

RJ2

JS/SV.MMS/SAR.4/29.08.2017/3P-6C