



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA(MD)No.66 of 2017
and
CMP(MD)No.593 of 2017

1.Selvaraj
2.Savithri
3.Minor.Kurinji ... Appellants/Respondents/plaintiffs
(rep. by her mother and natural guardian
the 2nd Appellant herein)

Vs.

V.Archunan ... Respondent/Appellant/Defendant

Prayer : Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (U) of CPC, to call for the records of the Lower Appellate Court and set aside the remand back order passed on 17.10.2016 in A.S.No.43 of 2015 in O.S.No.86 of 2013 on the file of the District Munsif Court, Thanjavur.

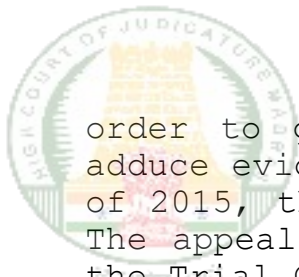
For Appellants	: Mr.V.Maragathavel
For Respondent	: No appearance.

JUDGMENT

The plaintiffs in the suit in O.S.No.86 of 2013 on the file of District Munsif Court, Thanjavur are the appellants in this Civil Miscellaneous Appeal.

2.The suit was one for declaration and permanent injunction. The suit was decreed on 29.07.2015. Aggrieved by the same, the defendant filed A.S.No.43 of 2015 before the Principal Sub Court, Thanjavur. The defendant filed I.A.No.82 of 2015 under Order 41 Rule 27 of CPC for adducing additional evidence. The defendant wanted to mark three additional documents, namely, settlement deed dated 31.05.1971, wedding invitation card dated 30.10.2011 and encumbrance certificate dated 20.11.2015 for the period 01.01.1970 to 31.12.1986. Those the three documents are pre-suit documents. There is no whisper about them in the written statement.

3.The said I.A ought to have been taken up only along with the main appeal. Instead, it was taken up on 25.02.2016 and allowed. Thereafter, the main appeal was taken up. The First Appellate Court took the view that deciding the appeal with considering the additional documents filed by the defendant may cause injustice. In



order to give one more opportunity to the defendant to mark and adduce evidence regarding the additional documents filed in IA.No.85 of 2015, the judgment and decree of the Trial Court was set aside. The appeal was allowed and the matter was remanded to the file of the Trial Court.

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4.The approach of the First Appellate Court was patently incorrect. It does not fulfil the parameters laid down under Order 41 Rule 23 and Rule 23 A of CPC. In this case, the error vitiating the impugned order of remand crept in because the application under Order 41 Rule 27 of CPC was taken up not along with the main appeal but even prior thereto. Even though the present appellants failed to file Civil Revision questioning the order dated 25.02.2016 allowing I.A.No.82 of 2015, this Court deems it appropriate to set aside the said order in view of its inherent illegality. The learned First Appellate Judge shall take up I.A.No.82 of 2015 afresh along with the main hearing in A.S.No.43 of 2015 and dispose of the matter in accordance with law.

5.This appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Subordinate Judge, Thanjavur.

2.The District Munsif, Thanjavur.

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

+1cc to M/S.V.Maragathavel, Advocate SR.No. 90914

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JM/SKN RSK/SAR 2/17.04.2018/2P/6C