



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA(MD)No.340 of 2016

- 1.Elizebath
- 2.Beula Mary
- 3.Vincent Mary
- 4.Jansi Rani
- 5.Sister.Marthel
- 6.Sirumalar

(Person of unsound mind through
her next friend Vedamanickam.
Appellants 1 to 5 through their
power agent Vedamanickam)

... Appellants

Vs.

- 1.Sengole

- 2.Sulochana

... Respondents

Prayer: Civil Miscellaneous Appeal is filed 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.14 of 2014 dated 27.02.2015 on the file of the learned District Judge, Sivaganga against judgment and decree in O.S.No.93 of 2008 dated 04.09.2013 on the file of the Sub Court Devakkottai.

For Appellants : Mr.R.Sundar Srinivasan

For Respondents : No appearance

JUDGMENT

The plaintiffs in the Suit in O.S.No.93 of 2008 on the file of the Sub Court, Devakkottai are the appellants in this Civil Miscellaneous Appeal.

2.The suit is one for partition. The learned Trial Judge granted preliminary decree. Questioning the same, A.S.No.14 of 2014 was filed before the Principal District Judge, Sivagangai. In the said First Appeal, the first defendant took out an application in I.A.No.105 of 2014 for pointing out the mental



condition of the sixth respondent. I.A.No.106 of 2014 was filed for adducing additional evidence.

3.The First Appellate Court did not dispose of either of the Interlocutory applications. After specifically observing that remand cannot be made on mere asking of the parties, the First Appellate Court chose to remand the matter. Even though it observed that the additional document filed by the defendant/appellant in A.S.No.14 of 2014 is necessary for the disposal of the case, it did not allow I.A.No.106 of 2014. If the First Appellate Court had allowed the applications filed Under Order 41 Rule 27 of CPC and received the additional evidence, then it would have been a different matter altogether. Instead doing so, the judgment of the Trial Court was mechanically set aside the order and the matter was remanded to the file of the Trial Court. Both the I.As filed by the defendant were also sent to the Trial Court. The power to make remand is not absolute. It is circumscribed by the parameters set out Under order 41 Rule 27 of CPC.

4.The order of remand made in A.S.No.14 of 2014 passed by the Principal District Judge, Sivagangai is set aside. The matter is remanded to the file of the learned Principal District Judge for fresh disposal in accordance with law. This Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal District Judge, Sivagangai.
 - 2.The Subordinate Judge, Devakottai.
 - 3.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)
- + 1 cc TO Mr.R.Sundar Srinivasan , Advocate in SR No. 91594

skm
AE/JC/SAR3/19.04.2018/2P/6C