



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.391 of 2015

and

MP (MD) No.2 of 2015

Sivakumaran

... Appellant/Respondent/Plaintiff

Vs.

1.R.Mathialagu

2.Sasireka

3.Karthik

... Respondents Appellants/Defendants

Prayer: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1, Clause (u) of Civil Procedure Code, 1908 against the order of remand dated 28.01.2014 in A.S.No.4/2013 on the file of the learned District Judge, Sivaganga setting aside the Judgment and Decree in O.S.No.100 of 2002 dated 18.03.2011 on the file of the Sub Court, Devakkottai.

For Appellant : Mr.R.Sundar Srinivasan

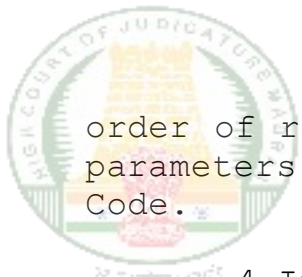
For respondents : Mr.S.Pugalendhi

J U D G M E N T

The appellant in this Civil Miscellaneous Appeal filed O.S.No.100 of 2002 seeking the relief of declaration and recovery of possession. The suit was decreed as prayed for. Questioning the same, the defendants filed A.S.No.4 of 2013 on the file of District Judge, Sivaganga. The First Appellate Court took the view that the suit property has not been correctly demarcated. It came to the conclusion that the decree was not workable. Therefore, it chose to set aside the judgement and decree passed by the Trial Court and remanded the matter to its file.

2.As rightly contended by the learned counsel appearing for the appellant, the four boundaries of the suit property have been furnished. In fact, the lower appellate Court had concurred with the finding of the Trial Court with regard to the establishment of title over the property. Therefore, there was no justification in holding that the decree is not workable.

3.That apart, in this case, an Advocate Commissioner has given his report. The survey plan is annexed to the said report. The encroachments on the eastern and western side have also been set out. In any event, an order of remand cannot be made for the asking. If there are any defects in the Judgment of the Trial Court, the necessary corrective steps can be taken by the lower appellate Court itself. There was no justification in passing an



order of remand. The impugned order of remand does not fulfil the parameters laid down under Order 41 Rule 23 of Civil Procedure Code.

4. In this view of the matter, the impugned order is set aside. The matter is remitted to the file of the learned District Judge, Sivaganga. The learned District Judge, Sivaganga is directed to dispose of the appeal as expeditiously as possible. This Civil Miscellaneous Appeal stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The District Judge,
Sivagangai
2. The Sub Judge, Devakkottai.
3. The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

KMI

VB/PN/SAR2/16.07.2018/2P/5C

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