



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2017

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CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.510 of 2015

and

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

Selvam ... Appellant/Respondent/Defendant

vs

Samyraj ...Respondent/Appellant/Plaintiff

Prayer: Appeal filed under Order 43 rule 1 of C.P.C., to set aside the judgment and decree dated 09.03.2015 in A.S.No.16 of 2011 on the file of the Sub Court, Sankarankovil reversing and remanding the judgment and decree dated 26.02.2010 in O.S.No.259 of 2008 on the file of the Additional District Munsif Court, Sankarankovil.

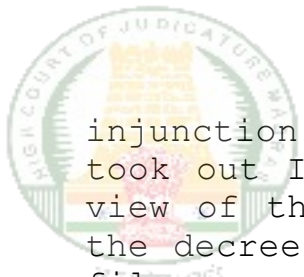
For Appellant : Mr.F.X.Eugene

For Respondents : Mr.S.Meenakshisundaram
senior counsel for
Mr.R.Manimaran

JUDGMENT

The defendant has filed this civil miscellaneous appeal questioning the order of remand made vide judgment and decree dated 09.03.2015 in A.S.No.16 of 2011 on the file of the Subordinate Court, Sankarankovil.

2.The respondent herein filed O.S.No.259 of 2008 on the file of the Additional District Munsif, Sankarankovil, seeking the relief of permanent prohibitory injunction. The suit was dismissed on 26.02.2010. Questioning the same, the respondent herein filed A.S.No.16 of 2011 before the Subordinate Court, Sankarankovil. The respondent also filed I.A.No.180 of 2011 for appointment of Advocate Commissioner. The lower appellate Court took the view that for finally determining the matter, it is necessary to appoint an Advocate Commissioner and decide the issue based on his report. It was also noted that the trial Court chose to dismiss the suit on the ground that declaratory relief was not sought and that the suit was only for permanent prohibitory



injunction. The lower appellate Court noted that the plaintiff took out I.A.NO.104 of 2012 and got the prayer amended. In that view of the matter, the first appellate Court chose to set aside the decree passed by the trial Court and remand the matter to its file.

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3. Heard the learned counsel for the appellant and the learned senior counsel for the respondent.

4. I am of the view that since the first appeal is only a continuation of the original suit proceedings, the first appellate Court itself could have finally disposed of the matter. There was no necessity to remand for the purpose of enabling the Advocate Commissioner to inspect the property and submit the report. It will prolong the proceedings unnecessarily. The first appellate Court can permit the parties to adduce additional evidence if necessary. The first appellate Court can also permit the appellant herein to file additional pleadings in view of the fact that the plaint has been amended. Any course of action that would meet the ends of justice can be adopted by the first appellate Court. The first appellate Court cannot mechanically remand the matter. I am therefore constrained to interfere with the order of remand made by the lower appellate Court.

5. I therefore set aside the order impugned in this civil miscellaneous appeal. The matter is remanded to the file of the first appellate Court. The first appellate Court shall endeavour to dispose of A.S.No.16 of 2011 on the file of the Subordinate Court, Sankarankovil, within a period of three months from the date of receipt of a copy of this order.

6. This civil miscellaneous appeal is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Sankarankovil.
2. The Additional District Munsif, Sankarankovil
3. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court, Madurai.
+1cc to M/S.F.X.EUGENE, Advocate SR.No.82694
+1cc to M/S.R.MANIMARAN, Advocate SR.No.82465
Arul
MAS/MR-KKR/SAR1:02.11.2017:2P-6C