



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
ATED : 11.10.2017
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

C.M.A.(MD)No.549 of 2015
and
MP(MD)No.1 of 2015

Sri Vinayaka Educational Trust,
Thovalai, Rep.by its
The Managing Trustee,
I.Krishna Pillai.

... Appellant / Respondent no.1 /
Defendant No.1

Vs.

1.Rathina Sabamani

... Respondent/ Appelant/ Plaintiff

2.Chelladurai

... Respondent / Respondent No.2 /
Defendant No. 2

Prayer: Appeal filed under Order 43 Rule 1(u) of CPC., to set aside the order of remand in respect of the claim of the second respondent / second defendant in relating to the suit property passed by the learned Sob-ordinate Judge, Valliyoor, Tirunelveli District dated 09.02.2015 made in A.S.No.76 of 2011 while confirming the decree and judgment of the learned Additional District Munsif, Valliyoor, Tirunelveli District made in O.S.No.43 of 2006, dated 20.10.2010.

For Appellant : Mr.S.Palani Velayutham
For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the order of remand made by the Lower Appellate Court.

2.The first respondent herein filed O.S.No.43 of 2006 on the file of the Additional District Munsif, Valliyoor, Tirunelveli District seeking relief of partition and separate possession. The suit was dismissed by judgment and decree dated 20.10.2010. Aggrieved by the same, the first respondent herein filed A.S.No.76 of 2011 before the Sub Court, Valliyoor. The First Appellate Court noticed that no finding has been given by the Trial Court with regard to the entitlement of the second defendant who is the second respondent herein. Therefore, after dismissing A.S.No.76 of 2011, the lower Appellate Court chose to remit the matter to the file of the Trial Court for determining the entitlement of the



second defendant. Aggrieved by the same, this appeal has been filed.

3. Heard the learned counsel for the parties.

4. As rightly contended by the learned counsel for the appellant herein, the First Appellate Court itself can dispose of the matter finally on its own. The Trial Court had permitted both the parties to adduce evidence. The finding of the First Appellate Court is that the Trial Court omitted to give a finding regarding the entitlement of the second defendant. If that is so, the First Appellate Court can itself render a finding and dispose of the matter finally. There was no need for remanding the matter on this score. That apart aggrieved by the dismissal of the suit, it is only the plaintiff who chose to file the first appeal. Even before this Court, the second respondent has not entered appearance through the counsel or presented this case.

5. The Lower Appellate Court has given a specific finding that the judgment and decree of the Trial Court dismissing the suit is correct. Having come to such conclusion and having dismissed A.S.No.76 of 2011, the matter should have rested there itself. There was no need for remitting the matter to the file of the Trial Court for adjudication the claim of the second defendant. The judgment and decree passed by the Lower Appellate Court therefore deserves to be modified. The orders confirming the decision of the Trial Court insofar as the claim of the plaintiff is sustained. The order remanding the matter for determining the entitlement of second defendant alone is interfered with. This Civil Miscellaneous Appeal is allowed, setting aside Clause 2 of the decree made in A.S.No.76 of 2011 on the file of Sub Court, Valliyoor remanding the matter for determining the entitlement of the second defendant.

6. The Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Valliyoor,
Tirunelveli District.

<https://hcservices.courts.gov.in/hcservices>
2. The Additional District Munsif, Valliyoor,
Tirunelveli District.



Copy to:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.S.Palani Velayutham , ADVOCATE IN SR No.82538
tsg
MK/SV MMS/SAR-2/02.11.2017/3P/5C

C.M.A. (MD) No.549 of 2015
and
MP (MD) No.1 of 2015
11.10.2017