



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.942 of 2015

and

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

1.Arumugasamy

2.Sarath

3.Minor Kapil

(rep. by her mother and natural
guardian Santhi)

... Appellants/Defendants

Vs.

Kumarasamy

... Respondent/Plaintiff

Prayer: Appeal filed under Order 43 Rule 1 (u) of C.P.C., to set aside the judgment and decree of the lower appellate Court dated 24.03.2015 passed in A.S.No.24 of 2014 on the file of the II Additional District Sessions Judge, Thoothukudi, reversing the Judgment and decree of the trial Court dated 09.04.2014 passed in O.S.No.1 of 2012 on the file of the Subordinate Judge, Kovilpatti and remanding the suit for fresh disposal.

For Appellants : Mr.R.Subramanian

For Respondent : Mr.M.Vinoth Singh Misra

JUDGMENT

The defendants in O.S.No.1 of 2012 on the file of the Sub Court, Kovilpatti have filed this civil miscellaneous appeal questioning the remand made by the first appellant Court vide judgment and decree dated 24.03.2015 in A.S.No.24 of 2014 on the file of the second Additional District Sessions Judge, Tuticorin.

2.The respondent herein filed the said suit seeking the relief of partition and separate possession. The trial Court dismissed the said suit by judgment and decree dated 09.04.2014. The aggrieved plaintiff filed A.S.No.24 of 2014. The lower appellate Court noted that necessary parties have not been impleaded in the suit proceedings and that therefore, the suit is hit by vice of non joinder. After holding that even though this stand was specifically pleaded in the written statement and that the plaintiff failed to take steps, the lower appellate Court chose to



remand the matter to enable the plaintiff to implead the necessary parties.

3. This Court cannot approve the approach of the lower appellate Court. If the plaintiff had deliberately defaulted in impleading the requisite parties, he must suffer the consequence. In order to give him a fresh lease of litigative life, an order of remand cannot be made. The first appellate Court cannot travel beyond the parameters laid down in Order 41 Rule 23 and Rule 23(A) of C.P.C. The mandate set out in Order 41 Rule 24 of C.P.C. is that where the evidence on record is sufficient to enable the appellate Court to pronounce judgment, the appellate Court is bound to do so. The order of remand made in this case is without jurisdiction. This Court therefore has to necessarily set aside the judgment and decree dated 24.03.2015 made in A.S.No.24 of 2014 on the file of the II Additional District Sessions Judge, Thoothukudi. The matter is remitted to the file of the lower appellate Court. The lower appellate Court is directed to dispose of A.S.No.24 of 2014 as expeditiously as possible on merits and in accordance with law.

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

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional District Sessions Judge,
Thoothukudi,
2. The Subordinate Judge,
Kovilpatti.
3. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.R.SUBRAMANIAN, ADVOCATE IN SR No. 83318
+ 1 CC TO Mr.D.SELVANAYAGAM, ADVOCATE IN SR No. 83501

ARUL

TE/SV-MMS/SAR-II : 02/11/2017 : 2P/6C

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