



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2017

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHANC.M.A. (MD) No.154 of 2016andC.M.P. (MD). Nos.1157 & 2536 of 2016

Saroja ... Appellant/Respondent/Plaintiff

Vs.

1.V.Ramasamy

2.V.Rajalingam ... Respondents/Appellants/Defendants

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of C.P.C., against the order of remand made in the Judgment and Decree dated 07.08.2015 in A.S.No.36 of 2014 on the file of the Additional Sub Court, Karur, by setting aside the Judgment and Decree, dated 14.07.2014 made in O.S.No.9 of 2011 on the file of the Principal District Munsif Court, Karur.

For Appellant : Mr.V.Sitharanjandas

For Respondents : Mr.S.Gokul Raj

J U D G M E N T

The plaintiff in O.S.No.59 of 2011 on the file of the Principal District Munsif Court, Karur, is the appellant in this Civil Miscellaneous Appeal. It was a suit for declaration and permanent injunction. It was decreed on 14.07.2014. Questioning the same, the defendants filed A.S.No.36 of 2014 before the Additional Sub Court, Karur.

2. Both the plaintiff as well as the defendants trace their title from one Sirumbayee. The case of the plaintiff is that her sale is anterior in point of time. The defence of the respondents is that the plaintiff was not the purchaser. But one Rengasamy was the purchaser.

3. The First Appellate Court came to the conclusion that to establish the truth in the matter, the said Sirumbayee has to be examined. It was in that view of the matter, the Judgment and Decree passed by the trial Court was set aside and the matter was remanded to the file of the trial Court for fresh disposal.



4. As rightly contended by the learned counsel for the appellant, such an approach is not to be countenanced. An order of remand cannot be made for the asking. If the evidence on record is sufficient to pronounce the Judgment in the first appeal, it is the duty of the First Appellate Court to pass orders on the first appeal on merits. In the present case, the trial Court had disposed of the suit on merits. Thus all the relevant materials were available before the First Appellate Court. If need be, even the First Appellate Court can permit the party to lead additional evidence. There was absolutely no justification in remanding the matter to the trial Court for the reasons set out in the Judgment of the First Appellate Court.

5. Therefore, this Court is of the view that the Judgment and Decree dated 07.08.2015 made in A.S.No.36 of 2014 on the file of the learned Additional Subordinate Judge, Karur, is liable to be set aside. It is accordingly set aside. This Civil Miscellaneous Appeal stands allowed and the matter is remitted to the First Appellate Court for fresh disposal in accordance with law. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar (CS-IV)

To:

1. The Additional Subordinate Judge,
Karur.
2. The Principal District Munsif,
Karur.
3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.V.Sitharanjandas, Advocate, SR.No.92912.

+1cc to Mr.S.Gokul Raj, Advocate, SR.No.92884.

C.M.A. (MD) No.154 of 2016 and
C.M.P. (MD) Nos.1157 & 2536 of 2016
14.12.2017

psd/pmu

RAM/SKN RSK/SAR 4/30.07.2018/2P/7C