

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.116 of 2016

and

C.M.P.No.1082 of 2016

Ganesan ... Appellant/Defendant

Vs

Amsa ... Respondent/Plaintiff

Prayer: Civil Miscellaneous Appeal has been filed under Order XLIII Rule 1(u) of CPC to set aside the Judgement and decree passed in A.S.No.24 of 2014, dated 15.07.2015, on the file the Subordinate Judge, Ranipet, Vellore District reversing and remanding the judgment and decree passed in O.S.No.6 of 2010, dated 30.01.2014, on the file of the District Musif cum Judicial Magistrate No.1, Walajahpet, Vellore District.

For Appellant : Mr.K.Mohanamurali

For Respondent : Mr.M.Vivekanandan

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order of remand made by the Appellate Court by setting aside the decree of dismissal passed by the Trial Court and directing the respondent herein to amend the plaint prayer for fresh disposal.

2. The Original Suit was filed by the respondent seeking injunction contending that the respondent is in possession of the property. However, finding that the respondent is not in possession of the property and giving such findings, the suit was dismissed. Against the said dismissal of the suit, the respondent preferred an appeal and the Appellate Court remanded the matter giving liberty to the respondent herein to amend the prayer seeking possession by deleting the prayer for injunction and to pass fresh orders giving liberty to the parties, against which, the present Civil Miscellaneous Appeal has been filed.

3. A perusal of the records would show that in paragraph 9 of the Trial Court judgment itself, liberty was given to the

parties to file a separate suit regarding the title of the property.

4. Mr.M.Vivekanandan, learned counsel for the respondent herein would submit that the respondent is ready to file a fresh Suit seeking declaration of title and in this regard, he seeks liberty for which the learned counsel for the appellant is also agreeable and therefore, the appeal is allowed setting aside the judgment of the appellate Court. However, the parties are at liberty to work out their remedies by filing appropriate suit before the appropriate forum regarding title of the property. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

pbn

TO

1.The Subordinate Judge,
Ranipet, Vellore District.

2.The District Munsif cum Judicial Magistrate,
Walajahpet, Vellore District.

+lcc to Mr.Mohana Murali, Advocate SR.No.15738

+lcc to Mr.Vivekanandan, Advocate SR.No.15779

C.M.A.No.116 of 2016

MG(CO)

GN(12/04/2018)

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