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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.09.2018
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) No.2181 of 2016
and
C.M.P. (MD) No.10143 of 2016

Irulappan (Died)

1.Periyanayagi

2.Angusamy

3.Kannagi

4.Pandimathi

...Petitioners/Petitioners/Plaintiffs
/Vs./

Karuppiyah (Died)

1.Ramayee

2.Veerappan @ Chinnakalai

3.Panju

4.Pandi

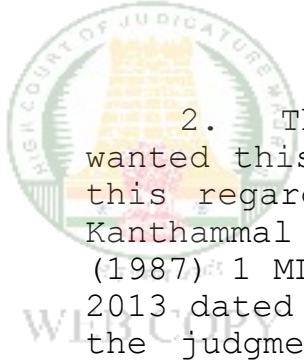
...Respondents /Respondents/
Defendants

Prayer: Civil Revision Petition - filed under Article 227 of the Constitution of India, to call for the records relating to the order dated 26.02.2016 made in I.A.No.192 of 2016 in O.S.No.70 of 1997 on the file of the District Munsif Court, Devakottai and set aside the same and allow the present civil revision petition.

For Petitioner	: Mr.J.Anandkumar
For R-1 to R-3	: Mr.R.Sundar Srinivasan
For R-4	: Tapal returned

ORDER

The plaintiffs in O.S.No.70 of 1997 on the file of the District Munsif Court, Devakottai are the revision petitioners herein. The suit was for declaration and permanent injunction. The suit was decreed on 31.10.2000. Questioning the same, the defendants filed A.S.No.3 of 2001 before the Sub Court, Devakottai. The respondents herein filed I.A.No.386 of 2001 under Order 41 Rule 27 CPC for adducing additional evidence. They filed 2 more documents for marking. The first appellate Court took the view that the additional evidence will have to be received. 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. Pursuant to the order of remand, the trial Court took up the matter afresh and marked a few more documents. To scrap the said additional documents, the revision petitioners filed I.A.No.192 of 2017. The Court below by order dated 26.02.2017, dismissed I.A.No.192 of 2017. Questioning the same, this Civil Revision Petition has been filed.



2. The learned counsel appearing for the respondents herein wanted this Court to sustain the order passed by the trial Court in this regard. He placed reliance on the decisions in the case of Kanthammal vs. Bysani Sriramulu Chetti and another reported in (1987) 1 MLJ 300 and an unreported order in C.R.P.(PD) (MD) No.2985 of 2013 dated 21.06.2017. The learned counsel would contend that since the judgment and decree passed by the trial Court in the first instance was set aside in toto and the matter was remitted to the file of the trial Court for fresh consideration, no such embargo can be put on the trial Court again receiving all the documents marked by the defendants in evidence.

3. I am unable to agree with the submissions of the learned counsel appearing for the respondents. In both the cases, on which the learned counsel appearing for the respondents placed reliance, the entire suit was remanded for fresh consideration without any rider. In the present case, the judgment and decree passed by the first appellate Court on 17.09.2001 remanding the matter, was not a case of remand simpliciter.

4. Clause 3 of the order of remand passed by the first appellate Court specifically directs that the trial Court shall permit the two documents filed by the defendants along with I.A.No.386 of 2001 in A.S.No.3 of 2001 to be received in evidence. It has been further stated that the plaintiff shall be allowed to cross-examine the defendants only on this aspect. The trial Court was also mandated to consider the said additional documents and pass judgment afresh. Therefore, this Court can only come to the conclusion that it was not a case of remand simpliciter. On the other hand, remand was for a specific purpose with a specific direction. Therefore, the trial Court could not have permitted the defendants to receive in evidence, documents over and above the two documents that were filed along with I.A.No.386 of 2007. The direction set out in clause 3 of the decree made by the first appellate Court on 17.09.2001 was not taken note by the trial Court.

5. I am therefore of the view that the order impugned in this civil revision petition is liable to be set aside. Accordingly, the order impugned in this civil revision petition is set aside and the civil revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
The District Munsif Court,
Devakottai.



+1CC to Mr.J.Anandkumar, Advocate, SR.No.87287

+1CC to Mr.R.Sundar Srinivasan, Advocate, SR.No.87124

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