

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.3337 of 2013

1. N.E. Sankaran

2. Sitheswari

... Petitioners

v.

1. P.G. Manickam

2. P.G. Baskaran

3. M.K. Sathasivan

4. K.Saravanan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.12.2013 made in C.M.A.No.1 of 2012 on the file of the Subordinate Judge of Perundurai confirming the order returning the plaint dated 30.09.2011 made in C.F.R.No.2048 of 2011 in unnumbered O.S.No.Nil of 2011, on the file of the District Munsif cum Judicial Magistrate of Perundurai.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.S.Kaithamalai Kumaran – for R2
Not Ready in Notice – for R1, R3 & R4

ORDER

The petitioners-plaintiffs filed the C.F.R.No.2048 of 2011 before the District Munsif cum Judicial Magistrate Court, Perundurai for declaration and permanent injunction.

2. The Trial court, returned the plaint under Order VII, Rule 10 of C.P.C. for want of pecuniary jurisdiction.

3. Challenging the order passed by the Trial Court, the plaintiffs filed an appeal in C.M.A.No.1 of 2012 before the Subordinate Court, Perundurai and the Lower Appellate Court, by order dated 10.12.2013, dismissed the appeal as not maintainable. While dismissing the appeal, the Lower Appellate Court, observed that the remedy open to the plaintiffs is to file an Appeal and not a Civil Miscellaneous Appeal.

4. On a perusal of the provisions of Order XLIII, Rule 1(a) of C.P.C., it is clear that an order under Rule 10 of Order VII, returning a plaint to be presented to the proper court is an appealable order. The

Lower Appellate Court has erroneously dismissed the appeal filed by the petitioner in C.M.A.No.1 of 2012.

5. Though the petitioners have wrongly quoted the provision of law in the grounds of appeal in C.M.A. No.1 of 2012, the Lower Appellate Court has numbered the appeal only as a Civil Miscellaneous Appeal and not a regular First Appeal.

6. In such view of the matter, I set aside the order passed by the Subordinate Court, Perundurai in C.M.A. No.1 of 2012 and remit the matter back to the Lower Appellate Court for fresh consideration. The Subordinate Judge, Perundurai is directed to decide the appeal in C.M.A.No.1 of 2012 afresh, on merits and in accordance with law, after giving an opportunity of hearing to all the parties.

With these observations the Civil Revision Petition is allowed.

No costs.

19.09.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

1. The Subordinate Court,
Perundurai .
2. The District Munsif cum Judicial Magistrate,
Perundurai.

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M.DURAI SWAMY, J.

Rj

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