

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

CMA.No.2461 of 2007
and
M.P.No.1 of 2007

Kusum .. Appellant

Vs

1.B.Rajendran

2.The Inspector of Police
(Law & order)
Saidapet Police Station,
Saidapet, Chennai - 15.

3.Dharmaraja Durapathy Amman Devasthanam,
represented by its Executive Officer/fit person,
Subramania Swamy Temple at Eldams Road,
Teynampet, Chennai - 18. .. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Order XLIII, Rule 1 (u) of CPC, against the Judgement and decree dated 12.01.2007 passed in A.S.No.578 of 2004 on the file of the II Additional Judge, City Civil Court, Madras, setting aside the dismissal of the suit in O.S.No.1064 of 1992 dated 05.04.2004 on the file of the V Assistant Judge, City Civil Court, Madras and remand back to Trial Court for fresh disposal.

For Appellant : Mr.B.Aravind Srivatsa
for Mr.T.V.Krishnamachari

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed under Order XLIII, Rule 1 (u) of CPC, against the Judgement and decree dated 12.01.2007 passed in A.S.No.578 of 2004 on the file of the II Additional Judge, City Civil Court, Madras, setting aside the dismissal of the suit in O.S.No.1064 of 1992 dated 05.04.2004 on the file of the V Assistant Judge, City Civil Court, Madras and remand back to Trial Court for fresh disposal.

2. The appellant is the legal Representative of the first defendant in O.S.No.1064 of 1992 and was impleaded as the fourth defendant of the deceased first defendant. The above suit was filed by the first respondent herein came to be

dismissed by a Judgment and decree dated 05.04.2004. On further appeal filed by the first respondent, the Second Additional Judge, City Civil Court, Chennai in A.S.No.578 of 2004 has allowed the appeal and remanded back to the trial Court deciding the suit. The operative portion of the said Judgment reads as under:-

14. In the result, the appeal is allowed by setting aside suit the lower court judgment and decree and remanded back to the trial court for fresh disposal according to law after answering all the issues.

3. I have perused the order of the learned II Additional Judge, City Civil Court, Chennai remanding the case back to the trial Court. In the present appeal, the appellant has not raised the substantial questions of law to be answered. No prejudice would be caused to the appellant, if the order remanding the case back is sustained to decide the issue afresh by the Trial Court.

4. In the light of the above, I am not inclined to interfere with the order of the trial Court. Hence, the civil miscellaneous appeal is dismissed. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Arbitration)

//True Copy//

Sub Assistant Registrar

arb/kkd

To

1. The II Additional Judge,
City Civil Court, Madras.

2. The V Assistant Judge,
City Civil Court, Madras.

3. The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.T.V.Krishnamachari, Advocate, S.R.No. 82155

+1cc to Mr.S.Muthukumar, Advocate, S.R.No.81795

CMA.No. 2461 of 2007

and

M.P.No.1 of 2007

RGN (CO)

<https://hcservices.ecourts.gov.in/hcservices/>

GN (11/03/2020)