



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2741 of 2017  
and  
C.M.P.No.15471 of 2017

Ponnammal .. Appellant/1<sup>st</sup> Defendant

Vs.

1.O.Nagappan

2.Subbulakshmi

3.Ponnusamy .. Respondents/Plaintiff & 2<sup>nd</sup> & 3<sup>rd</sup>  
Defendant

PRAYER : Civil Miscellaneous Appeal is filed under Order 43 rule 1(u) of Civil Procedure Code, against the judgment and decree dated 07.03.2017 made in A.S.No.30 of 2016 on the file of the Subordinate Court, Sathyamangalam, remanding the judgment and decree dated 25.01.2016 and made in O.S.No.195 of 2014 on the file of the District Munsiff court, Sathyamangalam.

For Appellant : Mr.M.Roshan Atiq

For Respondents

For R1 : M/s.T.Doraisamy

For R2 & R3 : No appearance

#### J U D G M E N T

The appellant herein is the 1<sup>st</sup> respondent in A.S.No.30 of 2016 / 1<sup>st</sup> defendant in O.S.No.195 of 2014 filed by the 1<sup>st</sup> respondent herein for the relief of declaration and permanent injunction and the same was contested by all the defendants.

2. After full trial the trial Court dismissed the suit. Aggrieved by the said order the plaintiff has preferred an appeal in A.S.No.30 of 2016 along with an application in I.A.No.19 of 2017 under Order 41 Rule 27 of CPC seeking permission to receive additional documents. The learned First



Appellate Judge allowed I.A.No.19 of 2017, dated 07.03.2017 and also allowed appeal by remanding the suit to the trial Court with a direction to permit the plaintiff to implead the necessary parties and also to amend the plaint, and to adduce additional witness if any and to dispose of the case on merits. Aggrieved by the said order the appellant / 1<sup>st</sup> defendant has preferred this appeal.

3. The question of law that arises for consideration is as to "Whether the trial Judge was right in remanding the suit to the trial Court for the purpose of impleading necessary parties and to amend, and to adduce further witness under Order 41 Rule 23 of CPC ?"

4. On a perusal of the record, it reveals that the trial Judge has framed 6 issues and all the issues have been answered on merits. But the First Appellate Judge, observed certain new facts and remanded the matter to the trial Court for fresh disposal. Under Order 41 rule 23(A), speaks that a case can be remanded and may further direct what issue or issues shall be tried in the case so remanded. But the order of the First Appellate Judge has inferred a new facts directing the 1<sup>st</sup> respondent / plaintiff to implead the necessary parties which are all not covered under the issue framed by the trial Judge while disposing the main suit.

5. As discussed above, all the issues which are framed by the trial Court was rightly answered and none of the issues were answered without any findings. But the learned First appellate Judge allowed the application permitting to allow the document, which can be considered by the First Appellate Court itself. But the plaintiff was again given opportunity to implead necessary parties and also to furnish additional witness without any valid reason. The plaintiff also has not established that he took all efforts to produce documents and witness before the trial Judge. Therefore, the order passed by the learned First Appellate Judge is set aside as unsustainable.

6. Accordingly, the order passed by the learned First Appellate Judge is set aside and the First Appellate Court itself is entitled to receive additional document as per order passed in I.A.No.19 of 2017 and directed to dispose the A.S.No.30 of 2016 within a period of Five months from the date of receipt of a copy of the judgment. The parties are directed to file additional documents if any, before the First Appellate Court and if such documents are filed, the same can be decided on merits and in accordance with law under Order 41 rule 23(A) of Civil Procedure Code.



7. Accordingly, in view of the above, this Civil Miscellaneous Appeal is Allowed. Consequently connected Civil Miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar(CJ Conf)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Court,  
Sathyamangalam.

2.The District Munsiff Court,  
Sathyamangalam.

C.M.A.No.2741 of 2017  
and  
C.M.P.No.15471 of 2017

RLD(CO)  
CB(12/10/2021)