



C.M.A(MD)No.322 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A(MD)No.322 of 2010

1.R.Sankaran

2.S.Balasubramanian (died)

3.Usha

4.Minor Devram

5.Minor Viruthika ... Appellants/Respondents / Plaintiffs

(Appellants 4 and 5 are represented through their mother and guardian the third appellant.)

(Appellants 3 to 5 are brought on record as legal heirs of the deceased 2nd appellant vide Court order, dated 17.11.2022 made in C.M.P(MD) Nos.10939, 10940 & 10942 of 2022)

Vs.

1.Annamalai Nadar ...1st Respondent / Appellant/ 1st defendant



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2.The Tahsildar,
Office of Tahsildar,
Court Complex,
Ambasamuthram Taluk,
Tirunelveli District.

...2nd Respondent / 3rd Respondent / 2nd defendant

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of Code of Civil Procedure against the Judgment and Decree made in A.S.No.38 of 2008, dated 20.07.2009, on the file of the Sub Court, Ambasamuthram reversing the well considered Judgment and Decree dated 05.11.2007 passed in O.S.No.223 of 2006 on the file of the Principal District Munsif Court, Ambasamuthram.

For Appellant : Mr.D.Srinivasa Ragavan

For Respondents : Mr.D.Nallathambi - for R1

: Mr.C.Baskaran - for R2
Government Advocate

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree made in A.S.No.38 of 2008, dated 20.07.2009, on the file of the Sub Court, Ambasamuthram, in reversing the Judgment and



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Decree, dated 05.11.2007 passed in O.S.No.223 of 2006 on the file of the Principal District Munsif Court, Ambasamuthram.

2. The suit for declaration of title in respect of pathway was allowed by the Trial Court, whereas, the first appellate Court reversed the same by pointing out that the documents relied on by the plaintiffs do not show the linear measurements of the property and the plaintiffs have not taken any steps to appoint an Advocate Commissioner to inspect the disputed property and make necessary measurements. The case of the plaintiffs stands incomplete. Further, while impleading the Tahsildar for issuing UDR, which according to the plaintiffs, is erroneous, he has not impleaded the District Collector which is mandatory under the Code of Civil Procedure, while impleading any public servants. For these reasons, the first appellate Court has remanded the matter back to the Trial Court, giving liberty to the parties to agitate the cause after making necessary amendments.

3. Being aggrieved, the plaintiffs have preferred this Civil Miscellaneous Appeal, particularly, on the ground that while the first



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defendant has not participated in the trial till the end and remained exparte after cross-examining the plaintiffs, by the order of remand, the first appellate Court is providing an opportunity to the first defendant, who has not shown any interest to conduct the case and to fill up the lacuna on his case. The power to remand under Order 41 Rule 23 and 23 A of Code of Civil Procedure, does not contemplate such eventualities to order remand.

4. The learned counsel appearing for the first respondent would submit that the first appellate Court has rightly found that the plaintiffs have not placed necessary documents for the relief of declaration, but the Trial Court has erroneously arrived at a finding, which does not correlate with the documents relied on by the plaintiffs and has remanded the matter back for fresh trial, after impleading necessary parties.

5. This Court, on perusing the records and on hearing the rival submissions, finds that under Order 27(5-A) of the Civil Procedure Code, the Government has to be joined as a party in a suit against a Public Officer. The first appellate Court having found that the plaint lacks these



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two mandatory compliance, has remanded the matter back to the trial Court for the parties to agitate their cause, after complying with these mandatory requirements. This Court finds no patent error in the said order of remand and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

6. In fine, the Civil Miscellaneous Appeal is dismissed. The Registry is directed to forward the records to the first appellate Court forthwith and on receipt of the records, the first appellate Court shall send the records back to the Trial Court for completion of the *de novo* trial. The trial Court is expected to dispose of the suit as early as possible, preferably, within a period of six months from the date of receipt of records. No costs.

22.02.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No

RM



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To

- 1.The Sub Court,
Ambasamuthram
- 2.The Principal District Munsif Court,
Ambasamuthram.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

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