



C.R.P(MD)No.1162 of 2016 and C.M.A.(MD)No.424 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.11.2023**

CORAM

THE HONOURABLE MR.JUSTICE **P.B.BALAJI**

C.R.P(MD)No.1162 of 2016

and

C.M.A.(MD)No.424 of 2016

and

C.M.P(MD)Nos.5710 and 5711 of 2016

C.R.P(MD)No.1162 of 2016:-

M.Paramasivan

: Petitioner

.VS.

1.S.Pandaram

Shanmugavelu (Died)

2.Arulmigu Eswari Amman Kovil,
through its Nattamai, Paramasivan,
Kambaneri, Puthukudi, Tenkasi Taluk.

3.Arulmigu Sengamalam Udayar Thirukovil,
through its Nattamai, Paramasivan,
Kambaneri, Puthukudi, Tenkasi Taluk.

4.Rajalakshmi

5.Selvi

6.S.Anathakumar

: Respondents



C.R.P(MD)No.1162 of 2016 and C.M.A.(MD)No.424 of 2016

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and decreetal order dated 13.04.2016 passed in I.A.No.10 of 2011 in A.S.No.41 of 2009 on the file of the Additional Sub Court, Tenkasi and allow this Civil Revision Petition.

For Petitioner	:Mr.V.Meenakshi Sundaram
For R1	:Mr.M.P.Senthil
R2 to R6	:Ex parte

C.M.A(MD)No.424 of 2016:-

M.Paramasivan : Appellant

.vs.

1.S.Pandaram

Shanmugavelu (Died)

2.Arulmigu Eswari Amman Kovil,
through its Nattamai, Paramasivan,
Kambaneri, Puthukudi, Tenkasi Taluk.

3.Arulmigu Sengamalam Udayar Thirukovil,
through its Nattamai, Paramasivan,
Kambaneri, Puthukudi, Tenkasi Taluk.

4.Rajalakshmi

5.Selvi

6.S.Anathakumar

: Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 106 r/w Order 43 Rule 1(u) of Civil Procedure Code, to set aside the remand order in judgment and decree dated 13.04.2016 passed in A.S.No.41 of



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2009 on the file of the Additional Sub Court, Tenkasi and allow this Civil Miscellaneous Appeal.

For Appellant	:Mr.V.Meenakshi Sundaram
For R1	:Mr.M.P.Senthil
R2 to R6	:Ex parte

JUDGMENT

This Civil Revision Petition is directed against the amendment application being ordered in the appeal proceedings. The said amendment application was taken out by the unsuccessful plaintiff, who is the appellant in the first appeal.

2.The Civil Miscellaneous Appeal arises out of the judgment of the appellate Court remanding the matter back to the trial Court for fresh adjudication. Both the Civil Revision Petition as well as the Civil Miscellaneous Appeal have been preferred by the first defendant in the suit/first respondent in the first appeal.

3.The main ground of contention taken by the learned Counsel for the Revision Petitioner/appellant, Mr.V.Meenakshi Sundaram, is that the



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appellate Court ought to have decided the amendment application independently and thereafter, taken up the main appeal for disposal.

However, adopting an erroneous procedure, the first appellate Court has decided the amendment application along with the main appeal and allowed the amendment and directed the matter to be remitted back to the trial Court for fresh consideration. Therefore, he prayed that on this limited score alone, this Civil Revision Petition and the Civil Miscellaneous Appeal have to be entertained and allowed.

4.Per contra, Mr.M.P.Senthil, learned Counsel for the first respondent would state that there is no infirmity in the order of the first appellate Court and the same does not warrant any interference from this Court.

5.I have gone through the judgment of the first appellate Court and also the order allowing the amendment, as sought for by the plaintiff. Surprisingly, the appellate Court has discussed the appeal grounds and decided to allow the appeal by remitting the matter back to the Trial Court. Thereafter, the appellate Court has taken up the amendment application and proceeded to allow the same. Such a procedure has



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caused serious prejudice to the parties who opposed the said amendment.

More over, the amendment application not being an application for adducing additional evidence under Order 41 Rule 27 of CPC, the said application could not have been posted along with the main appeal and decided along with the main appeal and the application ought to have been taken up first and a decision rendered therein first, before hearing the main appeal.

6.I am unable to justify the procedure adopted by the appellate Court and on this limited ground, the matter is remitted back to the first appellate Court and the first appellate Court shall first take up the amendment application in I.A.No.10 of 2011 and decide the same afresh before deciding the main appeal in A.S.No.41 of 2009 and after hearing the parties, the first appellate Court shall take a final decision in I.A.No. 10 of 2011 within a period of six weeks from the date of receipt of a copy of this judgment and thereafter take a final decision in the main appeal, after hearing the parties, within a further period of three months thereafter.



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7. With the above observations, the Civil Revision Petition and the Civil Miscellaneous Appeal are allowed. Since the Civil Revision Petition and the Civil Miscellaneous Appeal have been allowed only on the technical ground of an incorrect procedure adopted by the first appellate Court, the first appellate Court shall not be influenced by any of the observations made herein above and shall independently decide the amendment application as well as the main appeal in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

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

02.11.2023

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To

The Additional Sub Court, Tenkasi.



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P.B.BALAJI, J.

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