



WEB COPY



C.M.A.No.801 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH.,J

C.M.A.No.801 of 2024
and CMP No.7426 of 2024

1. S.Martin
2. Vijayalakshmi

..Appellants/
Respondent 1 and 2/
Petitioners/
Defendants 1 and 2

Vs.

1. K.Selvakumar
2. The Commissioner,
Mettur Municipality,
Mettur Dam-I
Mettur Taluk,
Salem District

...2nd respondent/
3rd respondent/
2nd respondent/
3rd defendant

PRAYER : Civil Miscellaneous Appeal filed under Order 43 Rule 1(U) of the CPC to set aside the judgement and decree dated 11.01.2024 made in AS No.30 of 2019 on the file of the Sub Court, Mettur, reversing the fair and decretal order dated 28.08.2019 made in I.A.No.3 of 2019 in O.S.No.49 of 2015 on the file of the

1/5



C.M.A.No.801 of 2024

District Munsif Court, Mettur by allowing this Civil Miscellaneous Appeal.

For Petitioner : Mr.V.Elangovan

J U D G M E N T

The 1st respondent / plaintiff filed a suit in O.S.No.49 of 2015 on the file of District Munsif Court, Mettur. In this suit, the appellants who were defendants 1 and 2 filed an application in IA No.3 of 2019 for rejection of plaint under Order 7 Rule 11 of CPC. This application was allowed by the Trial Court by an order dated 28.08.2019. Aggrieved by the same, the 1st respondent / plaintiff filed AS No.30 of 2019. This is in view of the fact that an order passed in an application for rejection of plaint will fall under the definition of a decree under Order 2 Rule 2 of CPC. The Appellate Court has interfered with the order passed by the Trial Court rejecting the plaint and hence, the matter has to go back to the Trial Court to deal with the case on merits.

2. Originally against the above judgement, the appellants



C.M.A.No.801 of 2024

herein had rightly filed a Second Appeal. This is in view of the fact that the judgement passed in the appeal will not come within the purview of remand under order 41 Rule 23 of CPC. However, the registry has raised a query as to how the second appeal is maintainable by assuming that the judgement passed in the appeal will tantamount to a remand to the Trial Court. On such objections being raised by the Registry, the learned counsel for the appellants has converted the second appeal into Civil Miscellaneous appeal.

3. In the considered view of this Court, Civil Miscellaneous Appeal is not maintainable since the judgement in the appeal does not come within the purview of order 41 Rule 23 of CPC and consequently, the appeal against the order provided under Rule 43 Rule 1(u) of CPC will not apply. A regular second appeal under Section 100 of CPC alone is maintainable.

4. In view of the above, there shall be a direction to the Registry to number this appeal as a Second Appeal. The necessary corrections shall be carried out by the learned counsel for

3/5



C.M.A.No.801 of 2024

Appellants in this regard in the grounds of appeal and by incorporating the substantial questions of law. Thereafter, the second appeal shall be posted for admission before the Hon'ble Judge dealing with the concerned portfolio. This process shall be completed by the Registry within a period of one week from today.

5. This Civil Miscellaneous Appeal is accordingly closed. Consequently, the connected miscellaneous petition is also closed.

03.04.2024

rka
Index: Yes/No
Internet: Yes/No
Speaking order/Non-Speaking Order

To

1. The Sub Court, Mettur.
2. The District Munsif Court, Mettur

4/5



WEB COPY



C.M.A.No.801 of 2024

N.ANAND VENKATESH.,J

rka

C.M.A.No.801 of 2024
and CMP No.7426 of2024

03.04.2024