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A.S.No.937 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit. No.937 of 2024

and

C.M.P.No.25037 of 2024

Udaiyarkudi Periyapallivasal
Rep. by Managing Trustee,
Udaiyar Kudi,
Kattumannar Koil,
Cuddalore District.

... Appellant

Versus

1. Haja Sherif
2. Dhasthakir @ John Basha
3. Mohammadhu
4. Askar Ali
5. Abdul Rasheedh
6. HarifullaKhan
7. Pugazhanthi

... Respondents

First Appeal filed under Section 96 of Civil Procedure Code to set aside the Judgment and Decree dated 31.08.2021 in O.S.No.45 of 2013 passed by the Sub Court, Chidambaram.

For Appellant : Mr.K.J.Shiva Arudhra
For Respondents : No Appearance

J U D G M E N T

This First Appeal has been filed to set aside the Judgment and Decree dated 31.08.2021 in O.S.No.45 of 2013 passed by the Sub Court,



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Chidambaram.

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2. The Registry without going through the fact that the order which is impugned in this Appeal has been passed by the Sub Judge has erroneously numbered this Appeal. When the Appeal came up for hearing it was found that the Appeal against judgment and decree in O.S.No. 45 of 2013 passed by the learned Sub Judge, Chidambaram has to be filed only before the District Court concerned. Here in this case, the Appellant had come directly to the High Court without agitating their right before District Court concerned. Therefore, this Court directs the Registry to reject the Appeal memorandum to the learned Counsel for the Appellant with a direction to present the Appeal before the District Court concerned.

3. At this stage, the learned Counsel for the Appellant furnished copy of the judgment in Civil Appeal No.6336 of 2021, dated 28.10.2021 stating that the Civil Court has no jurisdiction and it has to be decided by the Wakf Tribunal.

4. On perusal of the judgment relied on by the learned Counsel for the Appellant, it is found that only in cases of dispute between the parties that whether the property is wakf property or not, the Wakf Tribunal has jurisdiction. Regarding the maintenance of suit for bare injunction the Civil



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Court has jurisdiction. Since the subject matter of the dispute is regarding permanent injunction in favour of the Plaintiff against the Defendants to put up constructions, the appeal arises out of suit for bare injunction. Therefore, the Appeal is to be preferred before the learned Principal District Judge, Cuddalore.

5. In the light of the above, the Registry is directed to transmit the entire case records in relation to this Appeal to the Court of Appeals concerned. The learned Counsel for the Appellant is also directed to present the present Appeal before the Court of Appeal concerned for getting appropriate orders. The Appellate Court is directed to entertain the Appeal as and when it is represented by the learned Counsel for the Appellant without taking note of the delay in filing the Appeal as the matter was pending before the High Court. Therefore, it should be considered favourably to the Appellant.

In the result, this *Appeal Suit is struck off from the Registry.*
Consequently, connected miscellaneous petition is closed. No costs.

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srm
Index : Yes/No
Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

srm

To

1. The Sub Court,
Chidambaram.
2. The Section Officer,
V.R.Section,
High Court, Madras.
3. The Principal District Judge, Cuddalore.

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and
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Copy to:

1. The Sub Assistant Registrar,
A.E. Section, High Court, Madras – 600 104.
2. The Section Officer,
E.R. Section, High Court, Madras – 600 104.

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