

(2017) 10 MAD CK 0048

In the Madras High Court

Case No : 196 of 2011 and M P (MD) No 1 of 2011

M.Ramasamy (Died), & Ors.

APPELLANT

Vs

Rama Maruthi Real Estate through its Managing Partner,
Maruthi Balakrishnan, & Anr.

RESPONDENT

Date of Decision : 03-10-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 41 Rule 27](#)

Citation : (2017) 10 MAD CK 0048

Hon'ble Judges : G.R.Swaminathan

Bench : SINGLE BENCH

Advocate : G.R.Swaminathan

Final Decision : Allowed

Judgement

1. This Civil Miscellaneous Appeal was filed by the plaintiffs in the suit. During the pendency of the Civil Miscellaneous Appeal, the first appellant died and the legal representatives have come on record. O.S.No.192/2007 was filed seeking the relief of specific performance. The suit was decreed by Judgment and Decree dated 25.11.2009 by the learned District Munsif Court, Virudhunagar. The defendants had remained ex-parte. However, the suit was decreed on merits. Aggrieved by the same, the defendants filed A.S.No.18/2010 before Sub Court, Virudhunagar.

2. Before the First Appellate Court, the defendants submitted that on account of communication gap between their counsel for the defendants and themselves, they remained ex-parte. This led to the passing of the said Judgment and Decree. In order to give one more opportunity to the defendants, the First Appellate Court chose to set aside the Judgment and Decree of the Trial Court and remitted the matter to its file. An order of remand cannot be made mechanically. It cannot be made for granting one more opportunity to the defaulting party to fill up the lacuna.

3. The First Appellate Court ought to have disposed of the matter based on the materials on record. If it so deemed it fit, it could have even permitted the defendants to let in additional evidence under Order 41 Rule 27 of the Civil Procedure Code. In any event, the order of remand could not have been made to the reasons assigned by the First Appellate Court.

4. Therefore, this Civil Miscellaneous Appeal stands allowed. The Judgment and Decree dated 27.08.2010 passed in A.S.No.18/2010 on the file of the Subordinate Judge, Virudhunagar is set aside. The First Appellate Court is directed to dispose of A.S.No.18/2010 within three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.