



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-08-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

Civil Miscellaneous Appeal Nos.2734 of 2025 and 2715 of 2026

C.M.A.No.2734 of 2025

Govindasami

S/o.Ramasami Mooper

..Appellant

Vs

Ayyasami Mooper (died)

1. Paramanandham
S/o.Ramasami Mooper

Ramalingam (died)
S/o.Ramasami Mooper

2. Masilamani @ Ammasi
S/o.Ramasami Mooper

3. Suresh
S/o.Ramalingam

4. Sudhakar,
S/o.Ramalingam

5. Sundhar
S/o.Ramalingam

6. Kanniyammal
W/o.Ramalingam

7. Annapoorani
W/o.Sanniyasi

8. Kalasiselvi
W/o.Sankar

..Respondents



[Cause title accepted *vide* Court order dated 28.04.2025 made in C.M.P.No.8704 of 2025 in C.M.A.Sr.No.170434/2024 by SSJ]

Civil Miscellaneous Appeal filed under Order XLIII Rule 1(u) of the Code of Civil Procedure against the judgment and decree dated 06.03.2023 made in A.S.No.46 of 2008 on the file of III Additional District Judge, Villupuram @ Kallakurichi, remanded back the judgment and decree dated 17.08.2005 passed in O.S.No.265 of 2002 on the file of II Additional District Munsif, Kallakurichi.

For Appellant : Mr.R.Bharath Kumar

For Respondents : Mr.S.Elayaraja [R1]
Mr.N.Manokaran [R3 to R6]
Mr.D.Muthuselvam [R7 & R8]

C.M.A.No.2715 of 2026

Govindasami
S/o.Ayyasami

..Appellant

Vs

1. Kanniyammal
W/o.Ramalingam
2. Suresh
S/o.Ramalingam
3. Sudhakar
S/o.Ramalingam
4. Sundhar
S/o.Ramalingam
5. Paramanandham
S/o.Ayyasami
6. Masilamani
S/o.Ayyasami
7. Selvi
D/o.Ayyasami



8. Poonkodhai
D/o.Ayyasami

9. Annapoorani
W/o.Sannasi Mooper

10.Aswathi
D/o.Pazhanivel

11.Abirami
D/o.Pazhanivel

12.Arumugam
S/o.Mannangatti Mooper

13.Muniyammal
W/o.Ayyasami

..Respondents

Civil Miscellaneous Appeal filed under Order XLIII Rule 1(u) of the Code of Civil Procedure against the judgment and decree dated 06.03.2023 made in A.S.No.23 of 2021 on the file of III Additional District Judge, Villupuram @ Kallakurichi, remanding back the judgment and decree dated 19.10.2019 passed in O.S.No.119 of 2007 on the file of Sub-ordinate Court, Kallakurichi.

For Appellant : Mr.R.Bharath Kumar

For Respondents : Mr.Selaiyaraja [R1]
Mr.N.Manokaran [R3 to R6]
Mr.D.Muthuselvam [R7 & R8]

COMMON JUDGMENT

C.M.A.No.2734 of 2025 has been filed by the third plaintiff against the judgment and decree dated 06.03.2023 made in A.S.No.46 of 2008 on the file of III Additional District Court, Villupuram, Kallakurichi.



2. C.M.A.No.2715 of 2026 has been filed by the second defendant against the judgment and decree dated 06.03.2023 made in A.S.No.23 of 2021 on the file of III Additional District Court, Villupuram, Kallakurichi.

3. The respondents 3 to 6 in C.M.A.No.2734 of 2025 and the respondents 1 to 4 in C.M.A.No.2715 of 2026 filed the suit in O.S.No.119 of 2007 on the file of the Sub Court, Kallakurichi seeking the relief of partition and for allotment of 1/3 share in the suit properties. This suit, after contest, was dismissed by judgment and decree dated 19.10.2019. Aggrieved by the same, plaintiffs filed A.S.No.23 of 2021 before the III Additional District Court, Villupuram, Kallakurichi.

4. Yet another suit came to be filed in O.S.No.265 of 2002 by the appellant in C.M.A.No.2734 of 2025 and two others seeking the relief of declaration and permanent injunction. The said suit was contested and it was allowed by judgment and decree dated 17.08.2005 by the II Additional District Munsif Court, Kallakurichi. Aggrieved by the same, the defendants in that suit filed A.S.No.46 of 2008 before the III Additional District Judge, Villupuram, Kallakurichi.

5. When the suit in O.S.No.119 of 2007 was pending, the plaintiffs therein had filed an application for amendment of plaint under Order VI Rule 17



CPC in I.A.No.123 of 2013. The said application came to be dismissed by an order dated 05.11.2013. Aggrieved by the same, C.R.P. No.633 of 2014 was filed before this Court. This revision came to be closed by an order dated 26.03.2019 on the ground that it has abated since the legal representatives of the deceased petitioner therein were not brought on record.

6. The suit in O.S.No.119 of 2007 was subsequently dismissed by judgment and decree dated 19.10.2019. Without noticing the same, C.R.P.No.633 of 2014 seems to have been revived and an order was passed by this Court on 25.01.2023 allowing amendment of plaint and thereby setting aside the fair and decreetal order passed in I.A.No.123 of 2013 in O.S.No.119 of 2007. Unfortunately, when this order was passed, it was not brought to the notice of this Court that the main suit itself came to be dismissed on 19.10.2019.

7. Pursuant to the above order passed by this Court, A.S.No.23 of 2021 came up for hearing before the III Additional District Judge, Villupuram, Kallakurichi, on 06.03.2023 and the appellate Court taking note of the order passed in C.R.P.No.633 of 2014 remanded the matter back to the trial Court with a direction to carry out the amendment and to record evidence and dispose of the suit based on the amendment within a period of two months.



8. In the light of the above order passed in A.S.No.23 of 2021, A.S.No.46 of 2008 also came to be disposed of on the same day by remanding the matter back to the trial Court. Aggrieved by these two judgments and decrees passed by the lower appellate Court, the present appeals have been filed before this Court.

9. Heard learned counsel for appellants and learned counsel for respondents. This Court also carefully gone through the impugned judgments.

10. The substantive suit is the suit filed in O.S.No.265 of 2002 on the file of II Additional District Munsif Court, Kallakurichi, wherein the relief of declaration of title and permanent injunction were sought for with respect to 79 items of suit properties. The other suit filed in O.S.No.119 of 2007 on the file of Sub Court, Kallakurichi, was for the relief of partition and allotment of 1/3 share, which contained 44 items of suit properties. It must be kept in mind that these 44 items of suit properties form part of the properties, which are the subject matter in O.S.No.265 of 2002.

11. The entire confusion started only after an order came to be passed by this Court in C.R.P.No.633 of 2014 dated 25.01.2023. When this revision was taken up for hearing, it was not brought to the notice of this Court that the suit in O.S.No.119 of 2007 had already been dismissed by judgment and decree



dated 19.10.2019. If this fact had been brought to the notice of this Court, the said revision would have been closed as infructuous since nothing was pending as on that date.

12. The suit filed in O.S.No.265 of 2002 was a substantive suit, which was contested by both parties and the judgment and decree was passed by the II Additional District Munsif Court, Kallakurichi, on merits on 17.08.2005. Hence, the appeal filed against the said judgment and decree ought to have been dealt with on merits. However, the suit has been mechanically remanded back to the file of the trial Court only for the reason that an order was passed in A.S.No.23 of 2021 remanding the suit in O.S.No.119 of 2007 back to the trial Court.

13. In the considered view of this Court, the remand that was made in both the cases is unwarranted. Both the suits have been heard on merits and the judgment and decree was passed and the appellate Court should have dealt with the appeals in A.S.No.46 of 2008 and A.S.No.23 of 2021 on merits. In fact, no useful purpose will be served in remanding the suits back to the file of the trial Court. As stated supra, this remand was made due to the order passed in C.R.P.No.633 of 2014, which order was virtually unworkable as on the date it was passed since the suit in O.S.No.119 of 2007 by then had been disposed of. It is also brought to the notice of this Court that pursuant to the order passed by



this Court in C.R.P.No.633 of 2014, amendment of plaint has also been carried out in O.S.No.119 of 2007 by inserting paragraph No.3(a), by claiming 12/32 share at paragraph No.8 of the plaint and making the consequential corrections at paragraph Nos.11 & 12 of the plaint by amending the share as 12/32. In the schedule of properties, additional properties have also been included and totally 104 items of properties have been shown in the schedule.

14. Learned counsel for appellants submitted that those amendments will have to be reversed since as on the date when the order was passed in C.R.P.No.633 of 2014, the suit in O.S.No.119 of 2007 was not pending. If this request made by learned counsel for appellants has to be acted upon, the order passed in C.R.P.No.633 of 2014 dated 25.01.2023 has to be recalled. Instead of further complicating the matter, this Court will issue directions which will sufficiently take care of the rights of both the parties.

15. The amendments that have been carried out in the plaint may not require a *de novo* trial before the trial Court. If at all any additional evidence is required, the appellate Court itself is possessed with such a power under Order 41 Rule 27 CPC. Insofar as amendments that have been carried out in the plaint, the defendants in O.S.No.119 of 2007 can be permitted to file an additional written statement by making their objections, which can be independently dealt with by the appellate Court.



16. In the light of the above discussion, this Court holds that the judgment and decree passed in A.S.No.46 of 2008 and A.S.No.23 of 2021 both dated 06.03.2023, cannot be sustained and the same is liable to be set aside by this Court.

17. Accordingly, both these appeals are allowed in the following terms:

- (a) A.S.No.46 of 2008 and A.S.No.23 of 2021 shall be restored to the file of the learned III Additional District Judge, Villupuram, Kallakurichi.
- (b) The defendants in O.S.No.119 of 2007 are permitted to file additional written statement to deal only with those amendments that have now been carried out in the plaint in O.S.No.119 of 2007.
- (c) The lower appellate Court shall act upon the evidence that has already been recorded before the trial Court while deciding the appeals.
- (d) If in the event any additional evidence has to be recorded, the lower appellate Court shall exercise its jurisdiction under Order 41 Rule 27 CPC and record the evidence.
- (e) Learned III Additional District Judge, Villupuram, Kallakurichi, shall dispose of the appeals in A.S.No.46 of 2008 and A.S.No.23 of 2021 within a period of four (4) months from the date of receipt of a copy of this order after affording opportunity to both sides.



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N. ANAND VENKATESH

gm

(f) A compliance report shall be filed before this Court after the disposal of the appeals.

No costs.

Registry is directed to send back the original records immediately to the III Additional District Court, Villupuram, Kallakurichi.

07-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
gm

To
The III Additional District Judge,
Villupuram,
Kallakurichi.

Civil Miscellaneous Appeal Nos.2734 of 2025 and 2715 of 2026