

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

A.S.No.1180 of 1990
and
Cros.Obj.No.68 of 1991

A.S.No.1180 of 1990

1.Raju Chettiar (Died)
2.Kuppusami Chettiar (Died)
S/O.Annamalai Chettiar
3.K.Indra,
W/O.Kuppusami Chettiar
4.Bagyalakshmi
D/O.Late Kuppusamy Chettiar
5.Minor Malarkodi
6.Minor Lavanya
(Appellants 5 and 6 minor rep.by mother and
next friend Bagyalakshmi/4th appellant)

Appellants

(Appellants 2 and 3 brought on record as
legal representatives of the deceased sole
appellant vide order of Deputy Registrar (AS)
dated 12.01.1993 made in CMP No.1607 of 1992)

(Appellant 3 recorded as LR of the deceased 2nd appellants
Appellants 4 and 6 brought on record as LRs of the deceased 2nd
appellant)

(Appellant 4 (Bagyalakshmi) appointed as guardian for
appellants 5 and 6 vide order of Court dated 29.07.2008 made in
CMP Nos.685 and 686 of 2008)

Vs.

1.Ganapathi
2.Kandasami
3.Rukmini Ammal (Died)
4.Krishnaveni Ammal
5.Maragathammal
6.Elumalali Chettiar
7.Purushothaman

RR5 to 7 brought on record as LRs of the deceased
3rd respondent vide order of Court dated 05.09.2006 made in
CMP Nos.6658 and 6659 of 1991

... Respondents

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Cros.Obj.No.68 of 1991:

1.Ganapathy

2.Kandasamy

... Appellants/Cross Objectors/
Respondents 1 and 2

vs.

1.Raju Chettiar (Died)

S/O.Duraisamy Chettiar

2.Kuppusami Chettiar (Died)

S/O.Annamalai Chettiar

3.K.Indra,

W/O.Kuppusami Chettiar

4.Bagyalakshmi

D/O.Late Kuppusamy Chettiar

5.Minor Malarkodi

D/O.Late Kuppusamy Chettiar

6.Minor Lavanya

D/O.Late Kuppusamy Chettiar

... Respondents/Appellants

(RR2 and 3 brought on record as LR's of the deceased sole respondent vide order of Court dated 12.01.1993 made in CMP No.1607 of 1992)

(RR4 to 6 brought on record as LR's of the deceased R2 vide order of Court dated 04/01/2010 made in CMP No.1315 to 1317 of 2009)

(Minors 5 and 6 are represented by mother of next friend K.Indira)

Prayer in A.S.No.1180 of 1990: Appeal filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 14.08.1990 in O.S.No.90 of 1984 on the file of the learned Subordinate Judge, Cuddalore.

Prayer in Cros.Obj.No.68 of 1991: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure against the Judgment and Decree dated 14.08.1990 in O.S.No.90 of 1984 on the file of the learned Subordinate Judge, Cuddalore.

For Appellants : No appearance
in A.S.No.1180 of 1990

For Respondents : Mr.Kingston Jerold in
A.S.No.1180 of 1990

For Cross Objectors : Mr.Kingston Jerold
in Cros.Obj.No.68 of 1991

For Respondents : No appearance
in Cros.Obj.No.68 of 1991

COMMON JUDGMENT

None appears on behalf of the appellants in the Appeal Suit.

2.The learned counsel appearing for the appellants submitted that she has given change of vakalat as early as on 17.02.2014. The name of the appellants has been printed. It is seen that batta is due with reference to the respondents 5 to 7. Despite specific directions issued in the year 2014, no steps have been taken for serving the respondents 5 to 7. Hence, the Appeal Suit is dismissed for default.

3.Heard the learned counsel appearing for the Cross Objectors.

4.The Cross Objection relates to future mesne profits, which has been denied by the trial Court on the sole ground that the 1st defendant namely, Raju Chettiyar, who is the 1st respondent in the Cross Objection, is a permissive occupant. The future mesne profits have been claimed only from the date of the suit. Even assuming that the 1st respondent was in permissive occupation, once a Suit for Partition is instituted, his occupation becomes accountable to the other sharers. Therefore, the trial Court was not right in rejecting the claim of the Cross Objectors namely, the respondents 1 and 2 in the main appeal, for future mesne profits, from the date of the suit till the date of delivery of possession.

Hence, the Cross Objection is allowed. There will be a decree for future mesne profits from the date of the suit till the date of delivery of possession of the shares of the Cross Objectors. The Cross Objectors are at liberty to apply to Order 20 Rule 12 of the Code of Civil Procedure for determination of the mesne profits. The appeal is dismissed for default. The Cross Objection is allowed. There will be no order as to costs in the Appeal Suit as well the Cross Objection.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mps/kak

To

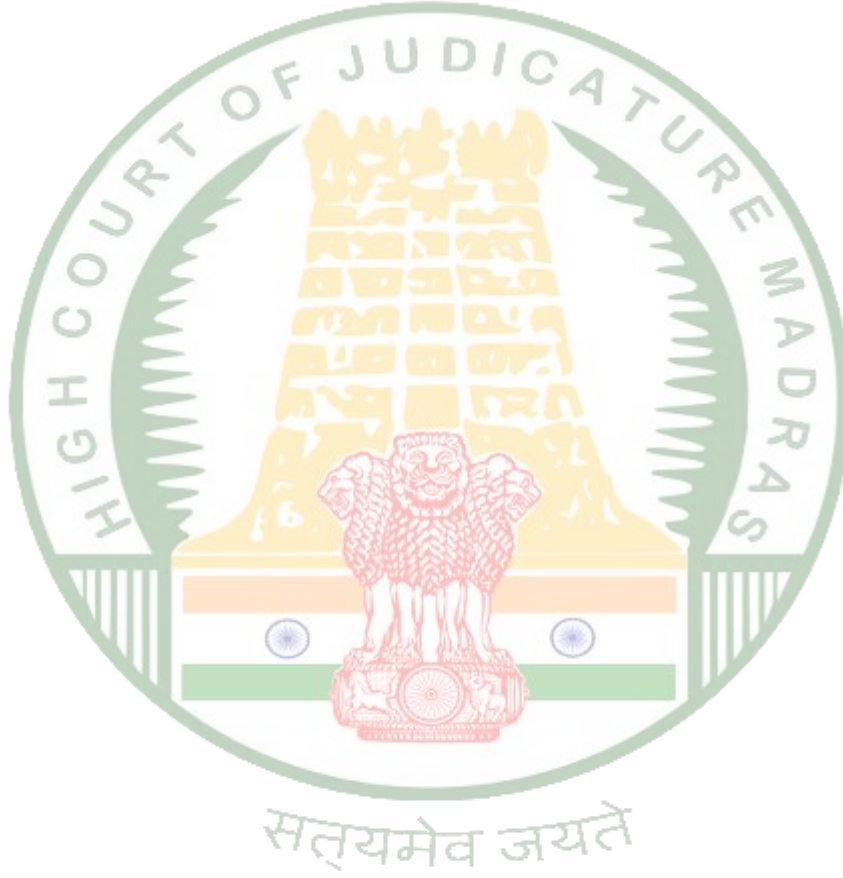
1.The Subordinate Judge,
Cuddalore.

2.The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.S.K.Rakhunathan, Advocate SR.No.50423

A.S.No.1180 of 1990
and Cros.Obj.No.68 of 1991

CNR(CO)
GN(18/09/2017)



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