

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.1083 of 2007 and
M.P.No.1 of 2013 and M.P.No.3 of 2011
and C.M.P.No.17128 of 2017
and Cros.Obj.No.57 of 2009

A.S.No.1083 of 2007:

1.V.Indirani ...Appellants 1 to 3/Defendants 1 to 3
2. I.V.Senthilnathan
3. K. Sasikala
4. T. Rajendran (deceased)...4th Appellant deceased/5th defendant
5. N.Hemalatha ...5th Appellant/8th defendant
6. P.S. Geetha
7. G.R. Darshini ...6th&7th Appellants/LRs of the 4th
appellant deceased/5th defendant

Vs.

1.A.Rajammal ...1st respondent/plaintiff
2.N.Maragathamani ...2nd respondent/4th defendant
3.S. Gunasundari (deceased)
4.Punniavathy ...4th respondent/7th defendant
5.Selvaraj
6.Ravi
7.Maalathi ... Respondents 5 to 7/Lrs of the
3rd respondent/6th defendant

(Appellants 6 and 7 brought on record as legal representatives of the deceased 4th appellant vide order of this Court dated 04.01.2018 made in C.M.P.No.18403 of 2017 in A.S.No.1083 of 2007)

(Respondents 5 to 7 brought on record as legal representatives of the deceased 3rd respondent vide order of this Court dated 14.03.2017 made in C.M.P.No.4484 to 4486 of 2017 in A.S.No.1083 of 2007)

Cros. Obj. No.57 of 2009:

Punniavathi ... Cross Appellant /
7th Defendant

vs.

1.V.Indirani
2.I.V.Senthilnathan
3.K. Sasikala
4.T. Rajendran (deceased)
5.N.Hemalatha
6.Rajammal
7.N. Maragathaamani
8.S. Gunasundari (Deceased)
9.Selvaraj
10.Ravi
11.Maalathi
12.Geetha
13.Darshini

... Respondents

(R9 to R11 brought on record as legal representatives of the deceased 8th respondent vide order of this Court dated 14.03.2017 made in C.M.P.No.18621 to 18623 of 2016 in Cros.Obj.No.57 of 2009)

(RR12 and 13 brought on record as legal representatives of the deceased 4th respondent vide order of this Court dated 04.01.2018 made in C.M.P.No.3 of 2018 in Cros.Obj.No.57 of 2009 in A.S.No.1083 of 2007)

PRAYER in A.S.No.1083 of 2007: Appeal filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 31.08.2006 in O.S.No.38 of 2004 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.III, Coimbatore.

Prayer in Cros. Obj. No.57 of 2009: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure against A.S.No.1083 of 2007 and the Judgment and Decree in O.S.No.38 of 2004 dated 31.08.2006 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.III, Coimbatore.

A.S.No.1083 of 2007:

For Appellants : No appearance
for appellants 1 to 3 & 5 to 7

4th appellant - died

For Respondents : Mr.T.R. Rajagopalan,
Senior Counsel
for Mr.T.R.Rajaraman
for R1 and R4

Mr.T.V. Ramanujam
Senior Counsel
for Ms.V.J. Latha for R2

R3 - died

No appearance for R5 to R7

Cros.Obj.No.57 of 2009:

For Appellants : Mr.T.R. Rajagopalan,
Senior Counsel
for Mr.T.R. Rajaraman

For Respondents : No appearance
for R1 to 3 and 5, 12 & 13

Mr.T.R. Rajagopalan,
Senior Counsel
for Mr.T.R. Rajaraman for R6

No appearance for R9 to 11
R4 and R8 -died

Mr.T.V. Ramanujam Senior Counsel
for Ms.V.J. Latha for R7

COMMON JUDGMENT

The above first appeal has been filed by the defendants 1, 2, 3, 5 and 8 in a suit for partition which has been filed by the 1st respondent with reference to the properties comprised in S.F.No.322/2 measuring an extent of 2.76 acres in Kurichi Village, Coimbatore, within specified boundaries. The suit has been decreed and the appellants have challenged the said decree.

2.When the matter came up on 08.01.2018, the learned counsel appearing for the appellants submitted that despite his efforts to contact his clients namely, the appellants herein and a registered letter being sent to them, there has been no response from the side of his clients and therefore, he had reported "no instructions". Therefore, this Court by order dated 08.01.2018 had directed notice to the appellants. It is also seen that the draft notice has been served to them, but however, they have not chosen either to appear before this Court or engage an other counsel to contest their case. Therefore, it has to be inferred that the appellants are not interested in continuing the appeal. In the meanwhile, M.P.No.3 of 2011 and M.P.No.1 of 2013 have been filed by the two of the petitioners seeking to implead

themselves as respondents in the above appeal on the basis that they are the legal heirs, who have been left out deliberately from the proceedings.

3.Considering the fact that the appellants are no longer interested in continuing with the appeal, this Court is left with no other option except to dismiss the appeal for non prosecution. However, taking note of the averments made in M.P.No.3 of 2011 and M.P.No.1 of 2013 regarding the claim of the petitioners therein to the properties in question, while dismissing the appeal, liberty is granted to the petitioners in the respective interlocutory applications to take such proceedings as they deem fit for establishing their right or title or interest to the properties.

4.The Appeal Suit is dismissed with the above observation.

Cros.Obj.No.57 of 2009:

5.It is further seen that the trial Court had granted a 1/3 share each to the plaintiff, to the three legal representatives of the said Thulasiammal, Wife of Ponnuswamy Devar namely, the son R.P. Viswanathan, the daughter R.T. Manonmani, wife of R.Thiyagarajan and A. Rajammal, Wife of K.Angamuthu, both are the legal representatives of the plaintiff. The Cross Objector is the 7th defendant in the suit who had purchased a portion from the 1st defendant and the 1st defendant as well as the plaintiff admitted that they have no objection in allotting that share to D.W.1, the vendor of the 7th defendant/Cross appellant. During the cross examination, she had admitted that she has no objection in allotting 63 cents from out of 92 cents to the 2nd and 3rd defendants. However, the preliminary decree was not granted in favour of the 7th defendant with reference to the above. The preliminary decree dated 31.08.2006 in O.S.No.38 of 2004, therefore stands modified to the extent of the 7th defendant portion as narrated above.

The Cross Objection is ordered. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

mps

To

1.The Additional District and Sessions Judge,
Fast Track Court No.III,
Coimbatore.

Copy to

The Section officer

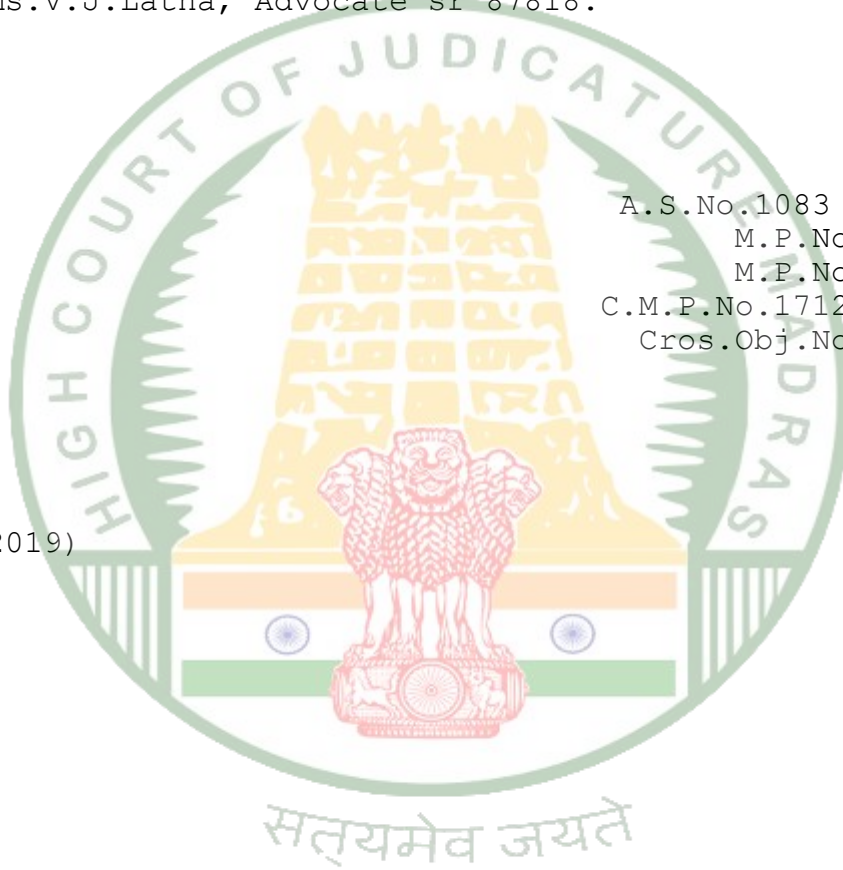
VR Section, High Court, Madras 104.(2 copies)

+1 CC to Mr.T.R.Rajaraman, Advocate sr 88079.

+1 CC to Ms.V.J.Latha, Advocate sr 87818.

A.S.No.1083 of 2007 and
M.P.No.1 of 2013&
M.P.No.3 of 2011&
C.M.P.No.17128 of 2017 &
Cros.Obj.No.57 of 2009

MP (CO)
SP (01/04/2019)



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