

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.03.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

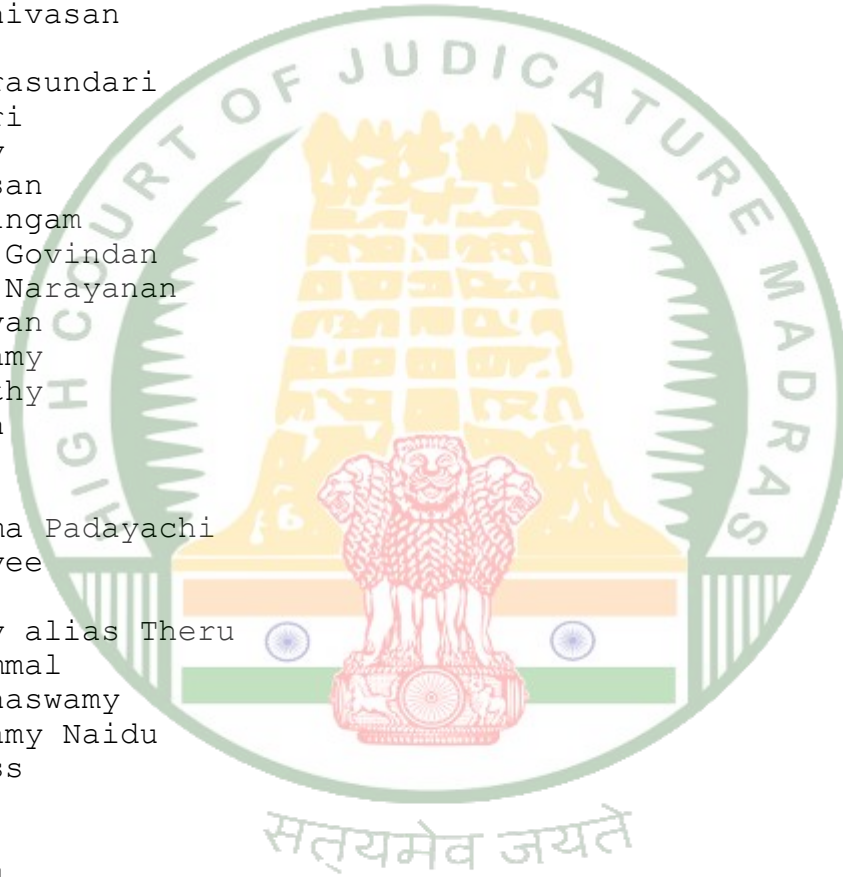
S.A.No.2074 of 2001

D.Dinesh Babu

... Appellant

Vs.

- 1.P.N.Srinivasan
- 2.Alamelu
- 3.Thirupurasundari
- 4.Maheswari
- 5.Hemvathy
- 6.Venkatesan
- 7.Vaithilingam
- 8.Thillai Govindan
- 9.Thillai Narayanan
- 10.Sahadevan
- 11.Kuppusamy
- 12.Pasupathy
- 13.Ganesan
- 14.Gowri
- 15.Rohini
- 16.Jayarama Padayachi
- 17.Anandayee
- 18.Valaru
- 19.Moorthy alias Theru
- 20.Rani Ammal
- 21.Narayanaswamy
- 22.Kuppusamy Naidu
- 23.Ramadoss
- 24.Seenu
- 25.Girija
- 26.Anusuya
- 27.Ranganathan
- 28.Gopal Padayachi
- 29.Gowri Ammal
- 30.Govindan
- 31.Ramalingam
- 32.Ramanujam Naidu
- 33.Lakshmipathy
- 34.Damodaran
- 35.Kasthuri
- 36.Saroja
- 37.Navaneetham Ammal
- 38.Ramu
- 39.Sarangan



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40.Jayarama Naidu
41.Kannan
42.Ramakrishna Naidu
43.Balakrishnan
44.Ramasamy
45.Nataraja Chettiar
46.Rangasamy Naidu
47.Jagadhambal
48.Dhakshinamoorthy Pandithar
49.Vijayalakshmi

... Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of the learned Principal District Judge, Cuddalore and made in A.S.No.122 of 1998 dated 31.07.2000 confirming the judgment and decree of the learned Additional District Munsif, Cuddalore and made in O.S.No.389 of 1996 dated 15.10.1998.

For Appellant : Mr.N.Anand Venkatesh

For Respondents: R1, R6, R7, R9 to R16, R18 to R20,
R22 to R26, R31 to R34, R38 to R43,
R48 and R49 - Dismissed vide
Court order dated 08.12.2009.

R17, R21, R28, R37,
R46 and R47 - Died.

R2 to R5, R8, R27, R29, R30,
R35 and R45 - No Appearance.

J U D G M E N T

The plaintiff who lost his case before both the Courts below is the appellant herein. The defendants 1 to 49 are the respondents 1 to 49 herein.

2.Originally the suit schedule properties belonged to one Vaithilinga Naidu. He settled his properties in favour of his only daughter namely, Govindammal and her three sons namely, Rajagopal, Dhandapani and Srinivasan. The said Srinivasan is the first defendant. Plaintiff is the son of the said Dhandapani and Alamelu/ second defendant. Defendants 3 to 5 are the sisters of the plaintiff/ daughters of the second defendant. Defendants 6 to 10 are the sons of the first defendant. Defendants 11 to 49 are the subsequent purchasers who purchased the property from the first defendant.

3.The appellant/ plaintiff filed the suit for partition against the defendants. The lower Court held that when the first defendant is alive, the plaintiff has no right to seek partition against the first defendant who is the brother of the

plaintiff's father. Accordingly, the suit was dismissed by the lower Court. Aggrieved by the same, the plaintiff preferred appeal before the lower Appellate Court and the lower Appellate Court confirmed the findings of the lower Court and dismissed the appeal. Hence, the appellant has come forward with this second appeal.

4.It is represented by the learned counsel appearing for the appellant that during the pendency of the second appeal, the first respondent/ first defendant passed away on 27.09.2016. In view of the above, nothing survives for adjudication in the second appeal and based on the fresh cause of action, the plaintiff is entitled to file a fresh suit before the lower Court. Accordingly, the learned counsel made an endorsement to that effect in the bundle.

5.In view of the above, the second appeal is dismissed as infructuous. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal District Judge, Cuddalore.
- 2.The Additional District Munsif, Cuddalore.
- 3.The Section Officer,
V.R.Section, High Court of Madras,
Chennai 600 104.

+1cc to M/s.N.Anand Venkatesh, Advocate Sr.No.16665

PPA(CO)
sm:26.3.2018

S.A.No.2074 of 2001

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