

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2019

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

S.A.No.858 of 2002

- 1.Minor Azhgan represented by his mother
and guardian Maheswari
- 2.Vaithiyalingam(Deceased)
- 3.Pushpa
- 4.Vijay
- 5.Malathi
- 6.Manoj
- 7.Angammal

... Appellants/Defendants 1&2
and LRs of the deceased
defendant No.2

Appellants 3 to 7 brought on record as legal representatives
of the deceased 2nd appellant vide order of the Court dated
22.03.2018 made in C.M.P.No.5592 to 5594 of 2018 in S.A.No.858
of 2002.

Vs

Madhaiyan

... Respondent

Prayer: The Second Appeal is filed under Section 100 of CPC,
against the judgment and decree dated 23.08.2001 passed in
A.S.No.4 of the 2001 on the file of the Sub Court, Mettur in
confirming the judgement and decree dated 12.10.2000 passed in
O.S.No.59 of 1999 on the file of the District Munsif Court,
Mettur.

For Appellants	: No appearance
For Respondent	: Mr.R.Thirugnanam

JUDGMENT

The Second Appeal arises from O.S.No.59 of 1999, filed by
the respondent/plaintiff in the District Munsif Court, Mettur,
seeking partition. The first appellant Azhgan was shown as a
minor at the time of the filing the Second Appeal. He was
represented by his mother and guardian Maheshwari. The second
appellant-Vaithiyalingam is the purchaser of the property. He
had purchased the property by a sale deed executed by Maheshwari

as guardian of the minor first appellant Azhgan. The first appellant had attained the age of majority, but he had not filed any application to recognize him as a major. He had however filed a suit against the second appellant to set aside the sale deed executed in favour of the second appellant by his mother as his guardian in O.S.No.193 of 2012 on the file of the District Munsif Court, Mettur. Consequently, there is a conflict of interest between the first appellant and the second appellant. Pending appeal, the second appellant also died and his legal representatives have been brought on record.

2.The Substantial question of law which arises for consideration is whether the suit is maintainable when the joint family properties were already partitioned as early as in the year 1983. However, now the property has also been sold and is the subject matter of another litigation.

3.In view of these facts, I heard that the appellants are not interested in proceeding with this appeal. In the result, this appeal is dismissed for non-prosecution.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dua/ssi

To

1.The Subordinate Judge,
Mettur.

2.The District Munsif,
Mettur.

3.The Section Officer, VR Section
Madras High Court. (2 Copies)

+1 cc to Mr.R.Thirugnanam, Advocate Sr.No.8047

RSI(CO)
CSL/25.03.2019

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