

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3436 of 2011
and M.P.No.1 of 2011

1. Chinnathambi
2.Govindan

... Appellants

vs

1.Mariyammal
2.Palaniammal
3.Parvathi
4.Karumalai
(The 4th respondent was set exparte
before the trial court and hence given
up in this appeal)

... Respondents

Prayer:Civil Miscellaneous Appeal filed under Order 43 Rule 1(C)
of C.P.C against the Judgment and decree passed in A.S.No.1 of
2011 dated 27.06.2011 on the file of the Additional District
Judge, FTC No.2 Salem, reversing the Judgment and decree passed
in O.S.No.259 of 2008 dated 26.07.2010 on the file of Principal
Sub-Judge, Salem.

For Appellants : Mr.S.Jayaseelan

For Respondents
1 to 3 : No Appearance

J U D G M E N T

The respondents 1 to 3 herein had filed O.S.No.259 of 2008
before the Principal Sub- Court, Salem to partition the suit
schedule property. The said court dismissed the suit on the
ground that non-impleading of necessary parties. Aggrieved by
the order of dismissal of the suit, the appellant/respondent
filed A.S.No.1 of 2011 before the Additional District Judge,
Fast Track Court No. 2, Salem.

2. The learned Additional District Judge, Fast Track Court No. 2, Salem has allowed the appeal filed by the respondents 1 to 3 herein vide impugned order dated 27.06.2011 by directing the respondents herein 1 to 3 to implead the necessary party.

3. Aggrieved by the impugned order, the appellants have filed the present Civil Miscellaneous Appeal. There is no representation on behalf of the respondents.

4. I have considered the records and the submission of the appellants. After all O.S.No.259 of 2008 filed before the Principal Sub- Court, Salem was only to partition the suit schedule property. To ask the respondents 1 to 3 herein to file a fresh suit for partition is nothing but to restart the whole process again. The orders passed by the learned Additional District Judge, in A.S.No.1 of 2011 is well reasonable. Therefore, I do not find any reasons to interfere with the order of the Additional District Judge, Fast Track Court No. 2, Salem.

5. Since the dispute is of the year 2008 and almost 11 years have been lapsed, the Trial Court, Salem may take up the case and dispose the same on merits and in accordance with law within a period of 12 months from the date of receipt of a copy of this order.

6. Therefore, the present Civil Miscellaneous Appeal stands disposed with the above observations by way of remand. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn

To

1. The Additional District Judge, FTC No.2 Salem,
 2. The Principal Sub-Judge, Salem
 3. The Section Officer,
V.R. Section, Madras High Court.
- +1cc to Mr.R.Nalliyappan, Advocate Sr.No. to 100310

C.M.A.No.3436 of 2011
and
M.P.No.1 of 2011

SSV(CO)
KKV/22/05/2020