

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 22.12.2020  
CORAM:

THE HONOURABLE MR.JUSTICE T. RAJA

C.M.A.No.2687 of 2011 and M.P.No.1 of 2011

Varadharaj

... Appellant/Plaintiff/Petitioners

Vs.

1. Vijayalakshmi
2. Rajammal
3. Raju @ Marimuthu
4. Chellammal
5. Asokan
6. Deenadayalan
7. Dharmalingam
8. Mani
9. Vijaya
10. Palaniammal
11. Angayammal
12. Kannammal
13. Selvam
14. Geetha
15. Rajammal
16. Dhakshinamoorthy
17. Sadhasivam
18. Kannammal
19. Chandra
20. Vimala

(RR3 to 20 are given up as  
they remained exparte in Lower Court

... Respondents/respondents/  
Defendants

Prayer: Civil Miscellaneous Appeal filed against the decree and judgment dated 10.11.2010 in A.S.No.34/2009 on the file of the learned I Additional District Judge, Salem, setting aside the decree and judgment dated 29.04.2009 in I.A.No.198/2000 in O.S.No.615/1981 on the file of the Principal Sub-Court, Salem.

For Appellant : Mr.R.Subramanian

For Respondents : Mr.N.S.Sivakumar  
1 and 2

Respondents 3 to 20: Given up

## JUDGMENT

This Civil Miscellaneous Appeal has been directed against the impugned judgment and decree dated 10.11.2010 made in A.S.No.34/2009 by the learned I Additional District Judge, Salem, in and by which the learned Appellate Court, while allowing the appeal set aside the order and decreetal order of the learned Principal Subordinate Judge, Salem, made in I.A.No.198/2000 in O.S.No.615/1981 and remanded the matter back to the trial court to pass fresh orders and also directed the learned Commissioner to inspect the suit properties, after giving notice to both sides and to file his report with plan with a suggestion for division of the properties.

2. When the matter was taken up, a joint memo was filed by both sides for appointment of Advocate Commissioner before this Court. Since the division of the properties was not made, this Court also accepting the joint memo, appointed an Advocate Commissioner by order dated 03.10.2018 to visit the suit properties and then to file his report. Accordingly, complying with the direction given by this Court, Mr.C.Kulanthaivel, learned Advocate Commissioner has also visited the suit properties and submitted his report.

3. It is, at this stage, Mr.N.S.Sivakumar, learned Counsel for the respondents 1 and 2 stated that since the respondents 1 and 2 are having some objections with regard to the report submitted by the Advocate Commissioner, it would be proper and fair on the part of the I Appellate Court to consider the objections of the appellant and pass a final decree.

4. Therefore, this Court, while remanding the matter back hereby directs the I Appellate Court, namely, learned I Additional District Judge, Salem, to consider the objections raised by the respondents 1 and 2, the report of the Advocate Commissioner and also the objections, if any, going to be raised by the appellant as well as the respondents 1 and 2 and thereafter, to pass a final decree, on or before the outer time limit of April, 2021.

5. With the above observation and direction, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

tsi

To

1. The I Additional District Judge, Salem.

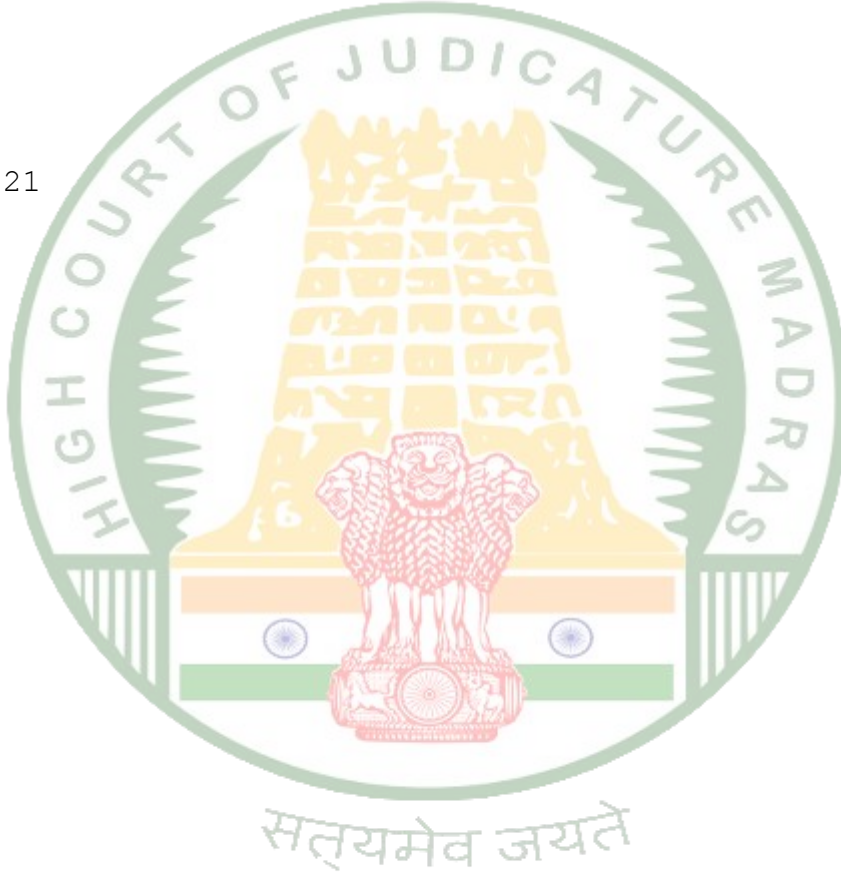
2. The Principal Subordinate Judge, Salem.

+1 cc to Mr.R.Subramanian Advocate sr42937

+1 cc to Mr.N.S.Sivakumar Advocate sr42522

CMA.No.2687/2011

kk(co)  
aa16/03/2021



WEB COPY