



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.419 of 2010

WEB COPY

P.Subbaiah (died)

1. S.Indirani

2. P.Jayaboopathy

3. S.Manikandan

4. S.Venkatesh

5. S.Rathinavel Pandian

6. Malarvizhi ... Appellants / Respondents / Plaintiff
(CAUSE TITLE ACCEPTED VIDE ORDER DT.26.04.10 made in
MP(MD). 1 Of 2010 in SA. SR No.1844 of 2010)

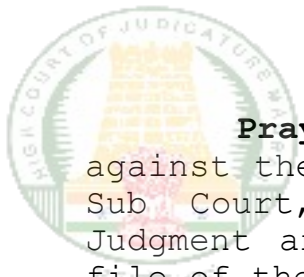
Vs.

1. Sri Ramakrishna Sevashramam,
Rep. By its Managing Trustee,
Srimatswami Atmananda,
4, Pasupathipalayam,
Karur Town,
Karur District.

2. Srimatswami Muthananda,
Sivapuram,
Sukkankalpatti Post,
Chinnamanoor Via,
Theni District.

3. Sri Ramakrishna Tapovanam,
Through its Secretary,
Swami Sathananda.
(R-3 is impleaded vide order dated 31.03.2022
made in C.M.P. (MD)No.2607 of 2022)

... Respondents / Appellants /
Defendants



Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 29.09.2009 on the file of the Sub Court, Uthamapalayam in A.S.No.103 of 2004 reversing the Judgment and Decree dated 20.10.2003 in O.S.No.206 of 2000 on the file of the District Munsif Court, Uthamapalayam.

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For Appellants : Mr.R.Suriyanarayanan

For R-3 : Mr.V.Ramakrishnan,
for Mr.K.Guhan.

For R1 : Substituted Service requested
in CMP(MD).12116/2019 and the
said CMP was closed on 31.03.2022

R2 : Batta with petition and enclosure due
* * *

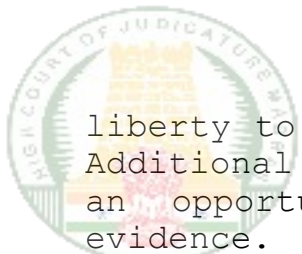
J U D G M E N T

One Subbaiah filed O.S.No.206 of 2000 on the file of the District Munsif Court, Uthamapalayam, for the relief of declaration and recovery of possession.

2. Srimat Swami Athmanandha and Srimat Swami Mukthanandha were shown as defendants in the said suit. After hearing both sides, the trial Court decreed the suit as prayed for. Aggrieved by the same, the defendants filed A.S.No.103 of 2004 before the Sub Court, Uthamapalayam. The first appellate Court drew adverse inference against the plaintiff on the ground that he did not produce original document which had been taken back in the meanwhile. In that view of the matter, the decision of the trial Court was reversed and the appeal came to be allowed and the said suit was dismissed by judgment and decree dated 29.09.2009. Challenging the same, this second appeal came to be filed.

3. In the second appeal, Sri Ramakrishna Tapovanam through its Secretary Srimat Swamy Sathyananda was impleaded as the third respondent vide Order dated 31.03.2022. After hearing the learned counsel on either side, I am satisfied beyond doubt that Subbaiah, the original plaintiff had passed away on 26.09.2008 itself. Thus, when the first appellate Court passed the impugned judgment and decree dated 29.09.2009, Subbaiah was dead. Decree against a dead person is a nullity in law.

4. In this view of the matter, the impugned judgment and decree passed by the first appellate Court are set aside. This second appeal is allowed. The matter is remanded to the file of the first appellate Court. Since the third respondent herein has been impleaded only in the second appeal, the third respondent is given



liberty to file written statement before the first appellate Court. Additional issue can be framed. The first appellate Court will give an opportunity to the impleaded respondent herein to adduce evidence. All the contentions of the parties are left open. The appellants herein are directed to resubmit the exhibits which were taken back by the original plaintiff Subbaiah by filing DRP. The parties shall appear before the Court below on 28.04.2022. The newly impleaded respondent shall file written statement on or before 30.06.2022. The first appeal shall be disposed by the first appellate Court after giving full opportunity to the parties on either side within a period of four months thereafter. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Sub Judge,
Uthamapalayam.
2. The District Munsif,
Uthamapalayam.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

S.A.(MD)No.419 of 2010

08.04.2022

CK(CO)

TR(26.04.2022) 3P 5C