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S.A.No.35 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

**S.A.No.35 of 2007**

**and**

**M.P.No.1 to 3 of 2010**

1. Rangabashyam
2. Thirumal

... Appellants

Vs.

- 1.Gandiammal @ Gandhi
- 2.Latha
- 3.Gnanam Udaiyar

... Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgement and decree of the Principal Subordinate Judge, Villupuram A.S.No.6/2005 dated 31.08.2005, modifying the Judgement and Decree of the II Additional District Munsif, Thirukoilur in OS.No.388 of 2003 dated 12.10.2004.



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S.A.No.35 of 2011

For Appellant : Mr. J.Srinivasa Mohan  
For Respondents : Mr.R.Balakrishnan [R.1]  
: R.2 & R.3 [Died vide memo dated  
23.08.2011]

### **JUDGMENT**

On the last occasion since steps were not taken to bring on record the legal representatives of the appellants, the Second Appeal was dismissed as abated. Thereafter, it came to notice of the Court that the legal representatives of the 1<sup>st</sup> appellant is already on record as the 4<sup>th</sup> and the 5<sup>th</sup> respondents who are the children of the 2<sup>nd</sup> respondent and the daughter of the 1<sup>st</sup> respondent. Therefore, the Second Appeal could not be dismissed as abated, consequently, the matter was listed today under the caption "*for clarification*".

2. It is informed by the learned counsel for the appellant that the suit OS.No.388 of 2003 had been filed to declare the settlement deed executed by the 1<sup>st</sup> appellant in favour of his wife, the 1<sup>st</sup> respondent as null and void and for a consequential injunction. The suit was decreed and in appeal in



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A.S.No.6 of 2005, the Principal Sub-Judge, Villipuram has reversed the judgment and decree of the Trial Court. Therefore, the validity of the settlement deed has been upheld by the 1<sup>st</sup> Appellate Court.

3. Now, the 1<sup>st</sup> appellant is no more, his son who is the 2<sup>nd</sup> appellant is no more and the 1<sup>st</sup> respondent who is the wife of the 1<sup>st</sup> appellant and mother of the 2<sup>nd</sup> appellant and the 2<sup>nd</sup> respondent is also no more. Likewise, the 2<sup>nd</sup> respondent is also no more. However, her husband and children are arrayed as respondents 3 to 5 in the appeal. Apart from the said 2<sup>nd</sup> respondent, the 1<sup>st</sup> appellant had another daughter by name Kala.

4. The learned counsel for the appellant would submit that he has received oral instruction that the said Kala has purchased the property which has been settled on the 1<sup>st</sup> respondent and subsequently settled by the 1<sup>st</sup> respondent on the 2<sup>nd</sup> respondent. By this purchase, the other daughter of the 1<sup>st</sup> appellant has recognized the right of the deceased 2<sup>nd</sup> respondent under the settlement deed executed by her mother, the 1<sup>st</sup> respondent.



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4. Both the counsels would submit that they have no instruction from their party despite the several communication that they have addressed to them. Though the respondents 4 and 5 are on record and the appeal has not abated, however, all the legal heirs of the 1<sup>st</sup> appellant and the 2<sup>nd</sup> appellant have not been brought on record to date. Therefore, taking into account the subsequent purchase by the other daughter of the 1<sup>st</sup> respondent nothing survives for consideration in the above appeal. Therefore, the above Second Appeal is dismissed for non-prosecution. No costs. Consequently, the connected Miscellaneous Petitions are closed.

**23.01.2023**

Index : Yes/No  
Internet : Yes/No  
Neutral Citation : Yes/No  
shr

To

- 1.The Principal Subordinate Judge, Villupuram.
- 2.The II Additional District Munsif, Thirukoilur.

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S.A.No.35 of 2007

**P.T. ASHA, J,**

shr

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