



C.M.S.A. No.12 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATE: 13.09.2023

Coram:

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

Civil Miscellaneous Second Appeal No.12 of 2017

1. Thiagaraj (died)  
2. T.Pruthyvi  
3. Sathyamurthy  
(Sole appellant died. Appellants 2 and 3  
brought on record as LR's of the deceased  
sole appellant viz. Thiagaraj vide Court  
order dated 21.06.2023 made in  
CMP No.6791 & 6792 of 2023 in  
CMSA No.12 of 2017 by AANJ)

... Appellants

Vs.

1. P.Subbiyan  
2. Backiyam  
3. Palanivel  
4. Ganesan  
5. Mullaiaammal  
6. T.Selvadurai  
7. S.Selvarani  
8. E.Ezlilarasi  
(Sole appellant died. Respondents 6 to 8  
brought on record as LR's. of the deceased  
sole appellant viz. Thiagaraj vide Court  
order dated 21.06.2023 made in  
CMP No.6830 & 6832 of 2023 in  
CMSA No.12 of 2017 by AANJ)

... Respondents



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**PRAYER:** This Civil Miscellaneous Second Appeal is filed under Section 100 of C.P.C., to set aside the judgment and decree dated 17.09.2016 of the Subordinate Judge, Nagapattinam, in CMA No.9 of 2014 and to restore and uphold the order and decretal order dated 04.09.2012 of the District Munsif, Vedaranyam in E.A.No.43 of 2011 in E.P. No.14 of 2010 in O.S. No.9 of 2008.

For Appellants : M/s.V.Raghupathi

For Respondents : Mr.A.Muthukumar for R1  
Mr.K.Goviganesan for R3 to R5  
Mr.K.M.Subramaniam for R6 and R7  
R2-died  
R8-Not ready in notice

### **JUDGMENT**

This Civil Miscellaneous Second Appeal is filed to set aside the judgment and decree dated 17.09.2016 on the file of the Subordinate Judge, Nagapattinam, in CMA No.9 of 2014 and to restore and uphold the order and decretal order dated 04.09.2012 on the file of the District Munsif, Vedaranyam, in E.A.No.43 of 2011 in E.P. No.14 of 2010 in O.S. No.9 of 2008.



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2. This Civil Miscellaneous Second Appeal is pending from the year 2017. Though the other respondents are served, the cause list shows that R2 died. But no steps have been taken so far. Further, batta is due for R8 and the amended copy of memorandum of grounds is also not filed before the Registry.

3. A perusal of records shows that it is only a partition suit and preliminary decree has already been passed and it is at the stage of execution. Though the appeal is pending from the year 2017, no steps have been taken even to serve notice on the unserved respondent and the learned counsel for the appellant is not ready to prosecute the appeal which, clearly shows that the appeal has been filed only to protract the execution proceedings.

4. In view of the above, this Civil Miscellaneous Second Appeal is dismissed for default. There shall be no order as to costs.

13.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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To

1. The Subordinate Judge, Nagapattinam

2. The District Munsif, Vedaranyam

3. The Section Officer,  
VR Section,  
High Court,  
Madras.



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**P.VELMURUGAN, J.**

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**13.09.2023**