



S.A(MD)No.157 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No.157 of 2019

and

C.M.P(MD)No. 3704 of 2019

1. T.Andisamy
2. A.Thothilingam
3. A. Sivanesan
4. A.Moovendhar
5. A.Asaithambi
6. Selvam (Minor) ... Appellants

[6th Appellant is represented through his father and natural Guardian the 1st Appellant]

Vs.

1. A.Mani
2. A.Thondhiyammal ... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment made in A.S.No.21 of 2013 dated 29.11.2018 on the file of the Additional District Court, Dindigul confirming the Judgment and Decree made in O.S.No.132 of 2006 dated 06.10.2010 on the file of the Additional Sub Court, Dindigul.



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For Appellants : Mr.A.M.Thirunavukkarasu

For Respondents : Mr.B.Ramanathan

JUDGMENT

This Second appeal is filed against the Decree and Judgment dated 29.11.2018 in A.S.No.21 of 2013 passed by the Learned Additional District Judge, Dindigul confirming the Judgment and Decree, dated 06.10.2010 in O.S.No.132 of 2006 passed by the Learned Additional Sub Judge, Dindigul.

2. The Defendants are the Appellants and the Plaintiffs are the Respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiffs and Defendants.

3. The plaintiffs have filed the suit in O.S.No.132 of 2006 on the file of the Additional Sub Court, Dindigul for partition. The Trial Court has allowed the suit in favour of the Plaintiffs and passed Preliminary Decree. Aggrieved over the same, the Defendants have preferred an appeal in A.S.No.21 of 2013 before



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the First Appellate Court. In the said appeal suit, the defendants have filed an interlocutory application in I.A.No.5 of 2018 to receive additional documents.

4. The First Appellate Court had considered the seven documents which were mentioned in the said application and had held that all the documents are relevant to decide the issue between the parties and had allowed the said application. Having allowed the said application, the First Appellate Court ought to have allowed the parties to address on the additional documents. But without granting any opportunity to let in oral evidence, on the same day the First Appellate Court has decided the appeal and rejected the claim of the appellants. Having allowed the said application, the First Appellate Court is incumbent to follow Order 41 Rule 25 of Civil Procedure Code, retain the appeal and decide the issue by the Appellate Court itself. Otherwise under Order 41 Rule 21A ought to have remitted the case to the Trial Court. The Appellate Court neither followed the Order 41 Rule 25 nor Order 41 Rule 21A. Hence, this Court is of the considered opinion that the Appellate Court has terribly erred by not allowing the parties to let in evidence on the additional documents. Therefore, this matter is remitted back to the Trial Court and the Trial Court shall consider the Ex.B.5 to



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Ex.B.11 in accordance to law after granting opportunity to both the parties. To this limited extent only the matter is remitted back to Trial Court.

5. The Judgment and Decree dated 29.11.2018 in A.S.No.21 of 2013 passed by the Learned Additional District Judge, Dindigul, confirming the Judgment and Decree, dated 06.10.2010 in O.S.No.132 of 2006 passed by the Learned Additional Sub Judge, Dindigul, are set aside.

6. Accordingly, this Second Appeal is Allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
KSA

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To

1. The Additional District Court,
Dindigul.
2. The Learned Additional Sub Court,
Dindigul.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

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**Judgment made in
S.A(MD)No. 157 of 2019**

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