



S.A(MD)No.24 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No. 24 of 2018

Kuppusamy

... Appellant

Vs.

Kuppana Gounder (died)

1. Sivasami alias Chinnasamy
2. Chinnathai @ Palaniammal
3. Ramathai

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment, dated 05.08.2016 passed in A.S.No.23 of 2012 on the file of the Subordinate Judge, Palani, setting aside the Judgment and Decree dated 19.03.2012 passed in O.S.No.284 of 2009 on the file of the District Munsif Court, Palani.

For Appellant : M/s.R.Janakiramulu

For Respondents : Mr.S.Anand Chandrasekar, for
M/s.Sarvabhavan Associates, for R-1 & R-2

Mr.VR.Shanmuganathan, for R-3



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ORDER

This Second Appeal is filed against the Decree and Judgment, dated 05.08.2016 passed in A.S.No.23 of 2012 on the file of the Subordinate Court, Palani, setting aside the Judgment and Decree, dated 19.03.2012 passed in O.S.No.284 of 2009 on the file of the District Munsif Court, Palani.

2. The 1st Plaintiff is the Appellant. The Defendants and the 2nd plaintiff are Respondents herein. For the sake of convenience, the rank of the parties shall be referred as plaintiffs and defendants as stated in suit.

3. The 1st plaintiff has filed a suit in O.S.No.284 of 2009 on the file of the Additional District Munsif Court, Nanguneri, for partition, claiming 1/3 share in the suit schedule parties and the same was allowed in favour of the 1st plaintiff. Against the same, the Defendants have preferred an appeal in A.S.No.23 of 2012 and the same was allowed. Aggrieved over the same, the 1st plaintiff has preferred this Second Appeal.



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4. Heard M/s.R.Janakiramulu, the Learned Counsel appearing for the Appellants, Mr.S.Anand Chandrasekar for M/s.Sarvabhavan Associates, the Learned Counsel appearing for the respondents 1 & 2, Mr.VR.Shanmuganathan, the Learned Counsel appearing for the 3rd respondent and perused the material documents available on record.

5. The defendants 1 & 2 have preferred an appeal before the First Appellate Court. The first appeal was allowed on the ground of non-joinder of necessary parties since the daughter of the Kuppana Gounder was not included as one of the parties in the suit. But during the pendency first appeal, the said Kuppana Gounder died and his legal heirs were impleaded as party. While impleading the legal heirs the said left-out daughter was also impleaded as one of the parties. In such circumstances, the first appellate court has erred in entertaining the plea of non-joinder of necessary parties. Therefore, the Judgment and Decree passed by the First Appellate Court cannot be sustained, accordingly it is set aside and the Second Appeal is allowed. The case is remitted to Trial Court. The parties are at liberty to raise all pleas, to file additional pleadings and to produce additional documents.



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6. With these directions and observations, the Second Appeal is Allowed. The Judgment and Decree, dated 05.08.2016 passed in A.S.No.23 of 2012 on the file of the Subordinate Court, Palani and the Judgment and Decree, dated 19.03.2012 passed in O.S.No.284 of 2009 on the file of the District Munsif Court, Palani are is set aside. No Costs.

Index : Yes / No
Internet : Yes
KSA

04.12.2023



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To

1. The Subordinate Court,
Palani.
2. The District Munsif Court,
Palani.
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. 24 of 2018**

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