



C.M.A.(MD).No.784 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.784 of 2019

and

C.M.P(MD) No.10130 of 2019

1. Murugan
2. Saranya
3. Minor. Rengasamy
(Minor respondent represented by his
next friend and father 1st appellant)

... Appellants 1 to 3/
Respondents 1 to 3/
Plaintiffs 1 to 3

-vs-

1. Vadamalai
2. Selvaraj
3. Sukiran
4. Arumugham
5. Lakshmi
6. Ramayee
7. Kavery
8. Dhanam
9. The State of Tamil Nadu
Represented by the District Collector,
Collectorate, Karur.

... Respondents 1 to 5/
Appellants 1 to 5/
Defendants 1 to 5

10. The Revenue Divisional Officer,
Revenue Divisional Office,
Kulithalai

... Respondents 6 to 10/
Respondents 4 to 8/



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Defendants 6 to 10

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII (I) (u) of C.P.C., against the judgment and decree in A.S.No.21 of 2019, dated 28.03.2019 on the file of the Additional Sessions Judge, Karur.

For Appellants : Mr.K.Govindarajan

For Respondents : Mr.N.GA.Natraj
Government Advocate
For – R9 and R10
: No appearance – R1 to R8

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the plaintiffs in a suit for partition challenging the order of remand passed by the first appellate Court.

2. The appellants herein as plaintiffs has filed O.S.No.40 of 2007 on the file of the Sub Judge, Kulithalai for the relief of partition and separate possession of 6/25 shares. In the schedule, the properties are separated as 'A' schedule property and 9 items are mentioned in the 'B' schedule property. In paragraph No.21 of the plaint, there is a reference about house property which



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is admitted to be a joint family property. The defendants in paragraph No.17 have also admitted that the said house property is a joint family property. However, due to an inadvertence, the plaintiffs has not included the said house property in the schedule of property. The trial Court has proceeded to decree the suit as prayed for. Challenging the same, the defendants have filed A.S.No.21 of 2019. The first appellate Court has found that the plaintiffs have not included the house property in the schedule of property though they have referred to the same in paragraph No.21 of the plaint. On the said ground, the first appellate Court has set aside the judgment and decree of the trial Court and had remitted the matter back to the trial Court. This order of remand is under challenge in the present appeal.

3. According to the learned counsel appearing for the appellants, there is no plea of partial partition in the written statement. Therefore, the said decree cannot be set aside on the ground of partial partition. Though the plaintiffs as well as the defendants have admitted the existence of the house property as a joint family property, only due to an inadvertence, the said property was not included in the schedule of property. Therefore, the said purpose of remand is not legally sustainable. Hence, he prayed for allowing



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the appeal.

4. Though the respondents 1 to 8 have been served, there is no appearance for them either in person or through their counsel.

5. Since the plaintiffs as well as the defendants have agreed that the house property referred to in paragraph No.21 of the plaintiffs is a joint family property, there cannot be any impediment for the plaintiffs to amend the plaint during the pendency of the first appeal. For the said purpose, the entire suit for partition need not be remitted to the trial Court. The plaintiffs may be permitted to amend the plaint to include the house property, for which, already there is an admission on the part of the defendants in paragraph No.17 of the written statement that it is a joint family property.

6. In view of the above said deliberations, the order of remand passed by the first appellate Court is hereby set aside and the matter is remitted back to the file of the first appellate Court for deciding the appeal on merits and in accordance with law, after permitting the plaintiffs to include the said house



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property in the schedule of property by way of amendment of plaint.

7. With the above said observation, this Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

22.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Additional Sessions Judge,
Karur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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