



S.A(MD)No.207 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No. 207 of 2018

Selvi

... Appellant

Vs.

1. Christopher
2. Vasudevan Pillai [Died]
3. Indira Amma
4. Vilasini
5. Pangajam
6. Ravindran
7. Lathakumari
8. Shaji
9. Vasumathi Amma
10. Gopalakrishnan Nair
11. Sagadeva Panicker
12. Appukuttan Nair
13. Raghavan @ Raghuvaran Nair
14. Lalitha



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15. Surekha

16. Sujithara

17. Aiswarya

18. Srikumari Devi

19. G.S.Vinod

20. G.S.Manoj

21. G.S.Santhosh

22. S.Anubama

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 24.02.2016 in A.S.No.91 of 2012 on the file of the Subordinate Judge, Kulithurai reversing the Judgment and Decree, dated 08.11.2012 in E.A.No.18 of 2010 in E.P.No.71 of 2008 in O.S.No.1516 of 1969 on the file of the Principal District Munsif Court, Kulithurai.

For Appellant : Mr.C.Mahadevan

For Respondents : Mr.C.K.M.Appaji, for R-1

: R-3, 6 to 13 & 14- No appearance

JUDGMENT

This Second appeal is filed against the Judgement and Decree, dated 24.02.2016 passed in A.S.No.91 of 2012 reversing the judgment and decree dated 08.11.2012 passed in E.A.No.18 of 2010 n E.P.No.71 of 2008 in O.S.No.1516 of 1969.



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2. The appellant is the plaintiff in the suit filed for partition. The appellant obtained a final decree in I.A.No.120 of 1985 in O.S.No.1516 of 1969 and had filed an Execution Petition to execute the said final decree in E.P.No.71 of 2008. The first respondent / third party had filed E.A.No.18 of 2010 as a third-party claimant over the suit property but the said E.A. was dismissed. Aggrieved over the first appeal in A.S.No.91 of 2012 was filed and the Lower Appellate Court reversed the findings of the Executant Court passed in E.A.No.18 of 2010. Aggrieved over the plaintiff, the decree holder had filed this second appeal and the same was admitted on the various substantial question of law.

3. The Learned Counsel appearing for the Appellant as well as the Respondents submitted that against the Final Decree in I.A.No.120 of 1985, second appeal in S.A.No.255 of 2005 was filed and the same was allowed vide judgment dated 13.04.20016. Aggrieved over Civil Appeal No.21834 of 2017 was filed before Hon'ble Supreme Court and the said appeal was allowed vide judgment dated 15.05.2018, wherein the Hon'ble Supreme Court had remitted the case back to the Trial Court. Therefor this Court is of the considered opinion that



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the present second appeal cannot be entertained when the I.A.No.120 of 1985 was remanded back for retrial.

4. Accordingly, the present Second Appeal is dismissed. However, the rights of the parties will be determined as per Judgment passed by the Trial Court which would be passed based on the remand order of the Hon'ble Supreme Court. The Appellant is at liberty to implead the respondents as parties in the retrial which is pending before the Trial Court, if so advised. No Costs.

Index : Yes / No
Internet : Yes
KSA

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To

1. The Subordinate Court,
Kulithurai.
2. The Principal District Munsif Court,
Kulithurai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

KSA

**Judgment made in
S.A(MD)No. 207 of 2018**

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