



C.M.A.(MD).No.1007 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1007 of 2017

and

C.M.P(MD) No.10353 of 2017

1. Chellakani Ammal (died)

2. Mohanraj (died)

..... Appellants/Respondents 3 and 4/
Defendants

3. Pappa

4. M.Vaikundaraja

5. M.Pravin

6. Minor M.Ranjith Kumar

..... Petitioners 3 to 6 / Lr's Deceased 2nd
Appellant/ Proposed Appellants 3 to 6

Petitioners 3 to 6 are brought on record as Lrs of deceased
2nd Appellant vide Order of this Court, dated 05.08.2020
made in C.M.P(MD) Nos.10261, 10263 and 10265 of 2019
in CMA(MD) No.1007 of 2017)

7. R.Balakrishnan

8. R.Rajalingam

9. R.Rajagopal

10. R.Athilingam

.... Petitioners 7 to 10 / Lr's Deceased 1st
Appellant / Proposed appellants 7 to 10

(Petitioners 7 to 10 are brought on record as Lrs of deceased
1st Appellant vide order of this Court, dated 05.08.2020 made
in C.M.P(MD) Nos.10256, 10258 and 10260 of 2019
in C.M.A.(MD) No.1007 of 2017)



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-VS-

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1. P.Raja
S/o. Pappu Nadar
2. P.Ganesan
S/o. Pappu Nadar
3. P.Chandran
S/o. Pappu Nadar
4. P.Kumar
S/o.Pappu Nadar
5. Jeya
W/o.Shanmugavel Nadar
6. Senthilkumar
S/o. Shanmugavel Nadar
7. Samuthirapandi Nadar
S/o.Ponniah Nadar,
8. Muthukrishnan
S/o. Nambi Nadar
9. S.Pon Ranjithammal
10. S.Jeyalakshmi
11. D.Ambika @ Jeya
12. T.Jhansi Rani
13. M.Sundari

... Respondents 1 to 6/
Appellants/Plaintiffs

.... Respondents 7 and 8/ Respondents 1
and 2 / Defendants 1 and 2



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14. L.Thiraviyalakshmi

15. S.Vijayalakshmi

16. J.Jeyachitra

17. R.Jeya Bharathi

18. N.Vasantha

19. R.Kala

20. B.Suwetha Respondents 9 to 20/ Respondents 5
to 16/ 3rd party

(The respondents 7 to 20 are not contesting parties,
Hence notice of them may dispense with)

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(U) of Civil Procedure Code, against the judgment and decree dated 07.02.2017, passed in A.S.No. 29 of 2013 on the file of the Principal District Court, Tirunelveli in so far as remanding the suit in O.S.No.68 of 2009, on the file of the Sub-ordinate Court, Valliyoor for fresh disposal by setting aside the judgment and decree, dated 30.01.2013.

For Appellants : Mr.H.Arumugam

For Respondents : Mr.D.Srinivasaragavan
for Mr.S.P.Maharajan
For R1 to R6
For R7 to R20- D/w



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J U D G M E N T

The defendants 3 and 4 in a suit for partition are the appellants herein. The said suit was filed for partition and the same was dismissed, on the ground of non-joinder of necessary parties.

2. The plaintiffs had filed A.S.No.29 of 2013 and pending the appeal, the female legal heirs of the deceased sons of Ponnaiah Nadar were impleaded as respondents No.5 to 16 in the appeal. The first appellate Court, citing the impleadment of new parties in the suit, had set aside the findings of the trial Court and 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, just because, the female heirs were newly impleaded in the first appeal, the first appellate Court ought not to have remanded the matter back to the trial Court. The first appellate Court is empowered to partition the shares among the co-sharers and grant a preliminary decree for partition. For the said purpose, the



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findings of the trial Court ought not to have been set aside and the suit should not have been remitted back to the trial Court.

4. The learned counsel appearing for the appellants further contended that the newly impleaded parties belong to three different branches, were already represented by the respective brothers of the branch. Therefore, there is no occasion for them to file any different written statement. He further pointed out that the newly impleaded female legal heirs have remained ex-parte even before the first appellate Court. Therefore, it is not necessary to remit the matter back to the trial Court.

5. Per contra, the learned counsel appearing for the plaintiffs/respondents had contended that when new parties were added in the first appeal, naturally, for filing the written statement the matter has to be remitted back to the trial Court, if the newly impleaded parties would like to file a written statement and let in oral and documentary evidence on their side. Therefore, the order of remand cannot be found fault with.



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6. I have carefully considered the submissions made by the learned counsel on either side.

7. The order of remand has been primarily passed, on the ground that certain female heirs of the deceased sons have not been impleaded before the trial Court, but they were impleaded only before the first appellate Court. Normally, when the parties are newly impleaded before the first appellate Court, the matter has to be remanded back to the trial Court to grant an opportunity to impleaded parties to file a written statement and let in oral and documentary evidence. But in a suit for partition, when the newly impleaded parties were substantially represented by their respective brothers in the suit, there is no necessity for remitting the matter back to the trial Court. All that has to be done by the first appellate Court is to rework the shares among the co-sharers, in view of the impleadment of the female heirs. As per the judgment of the Hon'ble Supreme Court, the female heirs who were left out, could be impleaded as the legal heirs even in the final decree proceedings. Therefore, the impleadment of female heirs at the first appeal stage cannot be a ground for remitting the matter back to the trial Court.



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8. The learned counsel for the respondents¹ to 6/plaintiffs had further contended that certain findings have been rendered by the first appellate Court in Paragraph No.18 touching upon the merits of the suit. Whenever, the Court decides to remit the matter back to the trial court, the Court should not venture into giving any finding on the merits of the suit, unless it is called for, for ordering remand.

9. In the present case, the suit has been dismissed on the sole ground of non-joinder of necessary parties. The said necessary parties have been impleaded before the first appellate Court. Therefore, the first appellate Court should have only considered whether the said Court itself can decide the issue or it shall be remitted back to the trial Court. Once the first appellate Court arrives at a finding that the matter has to be remitted back to the trial Court, the first appellate Court ought not to have ventured into deciding about the merits of the appeal. Therefore, it is left open to the parties to raise the legal issues once again before the first appellate Court.



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10. In view of the above said facts, this Court finds that the order of remand is not as per the Order 41 Rule 23 and the order of remand is set aside and the first appellate Court is directed to consider the appeal on merits and in accordance with law, after giving an opportunity to all the parties. This Civil Miscellaneous Appeal stands allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

24.03.2023

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

1. The Principal District Court,
Tirunelveli.
2. The Sub-ordinate Court,
Valliyoar.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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