



*S.A.(MD).No.514 of 2017*

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.12.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

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and

C.M.P.(MD)No.11025 of 2017

1.Vasantha  
2.Ramuthai  
3.Mokkaiammal  
4.Poochammal

... Appellants

/Vs./

1.Ayyambidari  
2.Thangakodi  
3.Thangapandi  
4.Pandiaraj  
5.Bommayan  
6.Ramesh  
7.Veluchamy

...Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 18.08.2017, made in A.S.No.3 of 2015 on the file of the Additional District and Sessions Judge, Theni, at Periyakulam, reversing the Judgment and Decree, dated 09.09.2014, made in O.S.No.4 of 2010 on the file of Subordinate Judge, Theni.



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For Appellants : Mr.R.Suriyanarayanan  
For R1 to 4 : Mr.M.Thirunavukkarasu  
for Mr.R.Karunanidhi  
For R5 to 7 : No appearance  
\*\*\*\*\*

### **JUDGMENT**

The plaintiffs are the appellants herein. The plaintiffs have filed a suit for partition declaring that the plaintiffs are entitled to 1/5<sup>th</sup> share and to divide the properties in metes and bounds. The suit was decreed as prayed for. Aggrieved over the same, the defendants preferred an appeal before the Appellate Court in A.S.No.3 of 2015. Pending appeal, the defendants preferred I.A.No.86 of 2017 to file additional documents. According to the defendants, the said documents are essential to decide the issues between the parties but the said I.A. was dismissed. Subsequently, the first appeal was allowed. Aggrieved over the same, the present second appeal is preferred by the plaintiffs.

2. The respondents herein submitted that the plaintiffs / appellants have not preferred any Civil Revision Petition separately before this Court, when the I.A., was dismissed. The learned Counsel appearing for



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the appellants relied on the judgment of this Court in C.R.P.(NPD)No. 3493 of 2016 wherein it is stated that the correctness of dismissal of I.A. can be canvassed in second appeal under Section 105 of CPC and separate Civil Revision Petition is not necessary. He also relied on another judgment rendered in the case of ***Thailammal and others Vs. Janardhab Raju and others*** reported in ***1995 Supp (4) Supreme Court Cases 455*** wherein it is held as under:

*“10. So far as the contention of the learned counsel for the plaintiffs is concerned, we are of the opinion that according to Section 9 it is open to a defendant to file an application thereunder in the suit for ejectment filed by the landlord against him. Such an application would be in the nature of an interlocutory application in the suit. In such a situation, it follows that once an appeal is filed by the defendant against the decree of the trial court, he is entitled to challenge the correctness of any interlocutory order passed in the suit, in such appeal, by virtue of Section 105 of the Civil Procedure Code. It is not necessary in such a case that he should prefer an independent appeal against the order dismissing an interlocutory application, even if it is appealable. This principle is of equal application herein even though the interlocutory application is one under Section 9 of the Act. Accordingly, it must be held that in the appeal/second appeal against the decree of the trial court, it was open to the defendants*



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*to challenge the correctness of the order dismissing their application under Section 9. The High Court was, therefore, not right in holding that the said application having been dismissed by trial court and no fresh application having been filed, it must be held that there was no application under Section 9. The application filed by the defendants in the trial court must be deemed to be pending during the pendency of the appeal/second appeal. Of course, what is its effect in law is a matter to be considered by the High Court hereinafter.”*

3. Therefore, relying on these two judgments, this Court is of the considered opinion that it is not necessary to challenge the dismissal of I.A., separately by filing a separate Civil Revision Petition. Moreover, this Court is of the considered opinion that the said documents are essential to decide the issues raised by the parties. Therefore, the proper remedy would be to remand back the matter to the Trial Court itself to decide the issue. The Trial Court is directed to mark the documents as per law and thereafter, decide the issue. The Judgment and Decree are set aside. The parties are at liberty to file additional pleading and additional documents before the Trial Court, if need be. The Trial Court shall conduct denova trial. The Trial Court is directed to complete the



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suit within a period of nine months from the date of receipt of a copy of this judgment.

4. With the above said observations, the second appeal is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

NCC : Yes / No

Tmg

**TO:**

1. Additional District and Sessions Judge,  
Theni, at Periyakulam.
2. Subordinate Judge, Theni.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SRIMATHY, J.**

Tmg

Judgment made in  
**S.A.(MD)No.514 of 2017**

Dated:  
**05.12.2023**