



A.S.No.752 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.174 of 2012

P.Sadhasivam [Deceased]

2.Savithri

3.P.S.Santhosh

4.P.S.Shalini

[Appellants 2 to 4 are brought on record as
L.R of the deceased 1st appellant vide order of
Court dated 18.09.2019 made in C.M.P.Nos.
5051 and 5051 of 2018 in A.S.No.174 of 2012]

... Appellants

...Versus...

1.P.Vaitheeswaran [Died]

2.P.Murugamanickam

3.P.Kumar @ Ramasami

4.Sarala Devi

5.S.Kanchana Devi

6.P.V.Vijayanandan

7.Pararmeswari

[RR4 to RR7 brought on record L.Rs of the deceased

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R1 vide order dated 18.03.2020 made in C.M.P.No. 3262 of 2020 in A.S.No.174 of 2012 (MKKSJ)]

...Respondents

PRAYER: This Appeal Suit is filed under Section 96 of C.P.C., against the judgment and decree made in O.S.No.101 of 2009 dated 30.03.2010 on the file of the learned Additional District Judge (Fast Track Court No.1), Salem.

For A1	::	Died
For A2 to A4	::	Ms.M.Vidhya
For R1	::	Died
For R2 and R3	::	Mr.C.Samivel
For R4 to R7	::	Mr.R.Vishnu
For R8	::	Mr.S.Ganesh

J U D G M E N T

The un-successful plaintiffs are the appellants herein.

2. Initially they are filed a suit which was dismissed for default and subsequently they are filed in O.S.No.101 of 2009 for partition of the property. The defendants 1 to 3 are the brothers.

3. In the written statement filed by the defendants 1 to 3, they



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have stated that one of the sister by name Prema has to be added. Some of the parties are not added in the schedule of the property. Therefore suit is bad for non-joinder of necessary party viz., Prema and non inclusion of the other properties.

4. The plaintiff filed A.S.No.174 of 2012 pending appeal, the original plaintiff filed and L.R are brought on record. The first defendant one of the brother -vaideeswaran died on 09.11.2019 his wife and L.R's are brought on record as R4 to R7 and also that, one of the sister who was said to have been omitted to be added as a party before the trial Court viz., Prema was subsequently impleaded by an order dated 03.09.2021 made in C.M.P.No.25163 of 2019.

5. After perusing the written statement filed before the trial Court by the defendant D1 to D3, it is specifically stated that the properties are not ancestral properties. Some of the properties omitted one to be included and Prema was not added as a party. Previous suit was dismissed for default. Now that the sister was added as R8, she has to be



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given a property being heard by filing pleadings as well as her evidence.

6. Accordingly,

(i) The Appeal Suit is hereby allowed to the limited extent indicated above.

(ii) The judgment and decree of the trial Court in O.S.No.101 of 2009 is set aside and the matter is remitted back to the learned Additional District Judge (Fast Track Court No.I, Salem) and O.S.No.101 of 2009 is to be restored to file and Prema– the newly added R8 is permitted to file the written statement within a period of eight weeks from the first date of hearing and shall commence with the evidence of the defendant.

(iii) It is open to the parties to either add additional evidence or to adopt the evidence already recorded before the Court.

(iv) The learned Additional District Judge (Fast Track Court No.1), Salem shall dispose of the case as early as possible.



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(v) In the event of written statement being filed by the newly added party, it is open to the plaintiff before the Trial Court to file re-joinder within a period of eight weeks from the date of the filing of the written statement.

(vi) The time stipulated of filing of the pleadings shall be disposed of in accordance with law. No costs.

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Internet:Yes/No

Speaking Order:Yes/No

To

1.The Additional District Judge (Fast Track Court No.1), Salem.

2.The Section Officer, V.R.Section, High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

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Judgment in
AS.No.174 of 2012



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