



*S.A.(MD).No.141 of 2007*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 28.10.2024**

**CORAM:**

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

**S.A.(MD)No. 141 of 2007**  
**and**  
**C.M.P(MD)No. 984 of 2023**

Munusamy (Died)

2. Renuga

3. Ushaprabha

4. Venkatesh Narayanan

5. Saravana Narayanan

... Appellants

*[Appellants 2 to 5 are brought on record as Legal heirs of deceased sole Appellant, vide Order of this Court, dated 09.02.2016]*

/Vs./

Ravi Narayanan

...Respondent

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed in A.S.No.53 of 2005 on the file of the Sub Court, Pattukottai, dated 16.10.2006 reversing the Judgment and Decree passed in O.S.No.77 of 1997 on the file of the District Munsif Court, Pattukottai, dated 30.11.2004.



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For Appellants : Mr.S.Srinivasa Raghavan  
Mr.S.Deenadhayan

For Respondent : Mr.N. Balakrishnan

### **JUDGMENT**

The present second appeal is filed against the Judgment and Decree dated 16.10.2006 passed in A.S.No.53 of 2005 on the file of the Sub Court, Pattukottai, reversing the Judgment and Decree dated 30.11.2004 passed in O.S.No.77 of 1997 on the file of the District Munsif Court, Pattukottai.

2. The Defendant is the Appellant herein and the Plaintiff is the Respondent herein. Since the defendant died his legal heirs were added as Appellants 2 to 5. For the sake of convenience, the parties are to be referred as Plaintiff and Defendants.

3. Pending second appeal the appellant died and his legal heirs are impleaded as appellants 1 to 4. Again the 1<sup>st</sup> appellant died pending second appeal. Since the appellants 2 to 4 are the legal heirs and



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they are already on record. A memo dated 05.09.2024 is filed to this effect and the same is recorded.

4. The Plaintiff has filed the O.S.No.77 of 1997 for bare injunction and the same was dismissed. Aggrieved over the same, the plaintiff has preferred an appeal in A.S.No.53 of 2005 and the same was allowed. Aggrieved over the same, the defendants have preferred this Second Appeal.

5. It is seen from the records that, originally the suit in O.S.No.77 of 1997 was filed bare injunction. Pending the second appeal another suit was filed by the same parties in O.S.No.126 of 2018 on the file of the III Additional District Court, Pattukottai. In O.S.No.77 of 1997 the suit property is situated in S.No.119/2C and the same property is shown as 4<sup>th</sup> item of the suit schedule property in O.S.No.126 of 2018. A comprehensive prayer was sought for in the subsequent suit. Therefore, this Court is of the considered opinion that if any Judgment is passed in the present second appeal, the rights of the parties will be affected in the comprehensive subsequent suit.



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6. Considering the nature and facts of the case, this Court is setting aside the Judgment and Decree dated 16.10.2006 passed by the Appellate Court in A.S.No.53 of 2005 on the file of the Sub Court, Pattukottai and also set aside the Judgment and Decree dated 30.11.2004 passed in O.S.No.77 of 1997 on the file of the District Munsif Court, Pattukottai. All the pleas available to both the parties are left open. The parties are at liberty to file additional pleadings and documents in O.S.No.126 of 2018 and thereafter contest the suit.

7. Accordingly, this Second Appeal is disposed of on the above directions. No Costs. Consequently, connected miscellaneous petition is allowed.

**28.10.2024**

Index : Yes / No

NCC : Yes / No

KSA

**Note : Issue a copy of order on 22.11.2024**



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**TO:**

1. The Sub Court, Pattukottai.
2. The District Munsif Court, Pattukottai.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SRIMATHY, J.**

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Judgment made in  
**S.A.(MD)No.141 of 2007**

**28.10.2024**