



S.A(MD)No.303 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **28.10.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.303 of 2006

K.Ganapathy Asari (Died)

... Appellant/Appellant/
1st defendant

2.Saraswathi
3.Jaya Chithra
4.Anitha
5.Sunitha
6.Ambi
7.Vinukumar

(Appellants 2 to 7 are brought on
record as LR's of the deceased
sole appellant vide Court order
dated 08.01.2024 made in
C.M.P(MD)Nos.17482, 17485
and 17486 of 2023)

Vs.

1.K.Santha Kumari
2.N.Sujitha
3.N.Ajitha

(Minor respondents 2 and 3 are
represented by their mother
the first respondent as Guardian)

4.K.Saraswathy
5.K.Thankam

... Respondents/Respondents/
Defendants 2 & 3



S.A(MD)No.303 of 2006

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 26.04.2005, on the file of the I Additional Sub-Court, Nagercoil (Camp at Padmanabhapuram made in A.S.No.42 of 2004 confirming the judgment and decree dated 18.02.2024 on the file of the Principal District Munsif Court, Padmanabhapuram made in O.S.No.37 of 2002.

For Appellants : Mr.V.M.Balamohan Thambi

For R1, R4 & R5 : Mr.K.N.Thambi

JUDGMENT

Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents 1, 4 & 5.

2.The learned counsel appearing on either side submits that the matter has been amicably settled between the parties and they have also filed a compromise memo, dated 28.10.2024. The joint compromise memo is found to be signed by both the parties along with the counsel on record and a scanned reproduction of the same is as follows:



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WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS
MADURAI BENCH
(Civil Appellate Side)

S.A.(MD) No.303 of 2006

K. Ganapathy Asari (Died)
Saraswathi and others.

.. Appellants

-vs-

K.Santha Kumari and others.

.. Respondents

MEMORANDUM OF COMPROMISE

Filed by appellants 2 to 7 and respondents 1 to 3 and
5 in the above Second Appeal.

1. It is respectfully submitted that the above second appeal has been filed against the concurrent judgment and decree in A.S. No.42 of 2004 on the file of the learned 1 Additional Subordinate Judge, Nagercoil (Camp, Padmanabhapuram), confirming the judgment and decree in O.S. No.37 of 2002 on the file of the Principal District Munsif of Padmanabhapuram. The said O.S. No.37 of 2002 is one for partition, wherein a preliminary decree for

✓ *Vinukumar*
7th Appellant:
Vinukumar
(for and on behalf
of himself and for
and on behalf of
appellants
2 to 6)

✓
1st Respondent: *S. Santha Kumari*
K.Santha Kumari
(for and on behalf of
herself and for and on behalf
of respondents 2 and 3)

✓
5th Respondent: *K. Thankam*
K.Thankam



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partition of the $\frac{1}{4}$ share of the plaintiffs in the O.S./respondents 1 to 3 in the S.A. has been granted to them, as prayed for by them. The said decree has been confirmed in the above said A.S.

2. The sole original appellant in the S.A./sole original plaintiff in the O.S. died, and his legal representatives have been brought on record as additional appellants 2 to 7 in the S.A.

3. The 4th respondent in the S.A./2nd defendant in the O.S., died.

4. Parties to the second appeal have compromised the case among themselves and arrived at and agreed to the following settlement:

a) that the suit property in the above said O.S. shall be sold and the proceeds thereof shall be divided within six months from this day as follows:

i) $\frac{1}{4}$ share for appellants 2 to 7 in the S.A./legal representatives of the deceased 1st defendant in the O.S.;

✓ *Vinukumar*
7th Appellant:
Vinukumar
(for and on behalf
of himself and for
and on behalf of
appellants
2 to 6)

✓
1st Respondent: *S. Santha Kumari*
K.Santha Kumari
(for and on behalf of
herself and for and on behalf
of respondents 2 and 3)

✓
5th Respondent: *K. Thankam*
K.Thankam



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- ii) $\frac{1}{4}$ share for respondents 1 to 3 in the S.A./plaintiffs in the O.S.
- iii) $\frac{1}{4}$ share for the legal representatives of the 4th respondent in the S.A./2nd defendant in the O.S.
- iv) $\frac{1}{4}$ share for the 5th respondent in the S.A./3rd defendant in the O.S.
- b) that, if the above said sale of the property and division of the sale proceeds are not effected within six months from this day, the parties shall be at liberty to proceed for passing of final decree as per the preliminary decree already passed in the suit *their respective shares, stated above.*
- c) parties agree to suffer their respective costs in the second appeal;
- d) parties agree to the disposal of the second appeal in the above terms; and
- e) this memorandum of settlement shall form part and parcel of the decree in the second appeal.

5. It is, therefore, prayed that this Honourable Court may be pleased to dispose ^{of} the above second appeal in the above terms, and render justice. *✓*

Dated at Madurai this the *28th* day of *October,* ~~November~~, 2024. *✓*

✓ Vinukumar
7th Appellant:
Vinukumar
(for and on behalf
of himself and for
and on behalf of
appellants
2 to 6)

[Signature]
Counsel
for Appellants
2 to 7

✓
1st Respondent: *S. Santha Kumari*
K.Santha Kumari
(for and on behalf of
herself and for and on behalf
of respondents 2 and 3)

✓
5th Respondent: *K. Thangam. **
K.Thankam

[Signature]
Counsel for Respondents 1 to 3 and 5



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3. Parties to the second appeal have compromised the case among themselves and arrived at and agreed that the suit property in the above suit shall be sold and the proceeds thereof shall be divided within six months from this day as follows:

i) 1/4 share for appellants 2 to 7 in the S.A/legal representatives of the deceased first defendant in the O.S.,

ii) 1/4 share for respondents 1 to 3 in the S.A/plaintiffs in the O.S.,

iii) 1/4 share for the legal representatives of the 4th respondent in the S.A/2nd defendant in the O.S.

iv) 1/4 share for the 5th respondent in the S.A/3rd defendant in the O.S.

If the above said sale of the property and division of the sale proceeds are not effected within six months from this day, the parties shall be at liberty to proceed for passing of final decree as per their respective shares, stated above.

4. Accordingly, the Second Appeal is disposed of in terms of the compromise memo dated 28.10.2024 and there will be a decree accordingly. The compromise memo, dated 28.10.2024, shall form part of the decree. No costs.



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28.10.2024

NCC : Yes/No
Index : Yes/No
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To

1. I Additional Sub-Court, Nagercoil
(Camp at Padmanabhapuram).
- 2.The Principal District Munsif Court,
Padmanabhapuram.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A(MD)No.303 of 2006

28.10.2024