



No.1311 of 2006.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Sixteenth day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mrs.Justice V.BHAVANI SUBBAROYAN

C.M.P(MD)Nos.8307 & 8309 of 2024

in

S.A(MD)Nos.1311 & 1310 of 2006

AUDICHAN NADAR (D40-DIED)

GOVINDAN (D102-DIED)

1 ROSAMMAL,

2 G.JUSTUS,

3 G.SUJI

4 G.SUNI

5 G.ANI

6 G.SIBIHA

7 SELVARAJ,

PONNUMONY NADAR (D41-DIED)

RAJAMMA (D105-DIED)

8 RAMACHANDRAN,(D106)



No.1311 of 2006.

9 NATARAJAN, (D107)

WEB COPY

10 KUMARAN (D108)

11 VIJAYAN (D109)

ATCHUTHAN (D43-DIED)

THANKAMMA (D110-DIED)

12 SATHIARAJ (D-111)

13 PAULRAJ (D-112)

PONNAMPERUMAL (D42-DIED)

KUNCHUKRISHNAN(DIED)

14 A.CHELLAPPAN

15 P.RETNABAI

16 PONNESAM

17 K.SANTHOSE,

18 K.KAVITHA

... PETITIONERS/
PROPOSED RESPONDENTS 97 TO 114
IN CMP(MD).8307/2024

... PETITIONERS/
PROPOSED RESPONDENTS 98 TO 115
IN CMP(MD).8309/2024

Vs

1 RAMACHANDRAN NAYAR,

... 1st RESPONDENT/ APPELLANT



No.1311 of 2006.

2 SIVADASAN NAYAR (DIED)

WEB COPY

3 MADHAVAN NAYAR(DIED)

4 APPAVU

5 VELAYUDHAM NADAR

6 KOLAPPAN NADAR

7 HARIYANDRAN NADAR,

8 GNANACHANDRAN NADAR,

9 PONNU PILLAI NADAR,

10 MUTHUSWAMY NADAR,

11 MUTHAIYAN

12 KESAVAN

13 BHARATHI PILLAI,

14 P.R.SANADHANAN NAYAR,

15 E.R.KUNJUKRISHNAN NAYAR,

16 E.R.DHAMODHARAN NAYAR,

17 BHAGAVATHY

18 PONNAMMA PILLAI

19 CHELLAMMA PILLAI

20 GOPINATHAN NAYAR



No.1311 of 2006.

21 SRI KANDAN NAYAR

WEB COPY
22 RAMANI

23 LEELA PAI AMMA

24 INDIRA AMMA

25 MADHAVAN THAMBI

26 PONNAMMA PILLAI THANKACHI

27 PRASANNA THANKACHI

28 BALAMMA

29 CHELLAIYAN

30 SELVAMANI

31 KOCHAN

32 SANKARAN NADAR,

33 MUTHAIYAN,

34 CELLAN

35 RAGHAVAN,

36 SOMAN,

37 PONNUMANI NADAR,

38 MUTHUSWAMY NADAR,

39 PONNAMPEUMAL NADAR,



No.1311 of 2006.

40 PONNAIYAN

WEB COPY

41 RAMASWAMY,

42 CHINNA MANICKAM NADAR,

43 MUTHAIYAN,

44 MADHAVAN THAMBI,

45 CHELLAIYAN NADAR

46 REVATHI NADATHI

47 MUTHUSAMY,

48 KOCHU KUNCHAN

49 SOMASEKARAN NAYAR (DIED)

50 NADANKANNU NADAR,

51 MAHESWARI AMMA

52 NIRMALA

53 JANAKI,

54 VIJAYAN

55 JEYAKUMAR,

56 NESAM

57 SARASWATHI

58 KRISHNASHWARI



No.1311 of 2006.

59 PALRAJ

WEB COPY

60 PADMANABAN NADAR,

61 VISALATCHI AMMA

62 CHANDRIKA PAI,

63 BALAIYAN,

64 PONNUMUTHU

65 SELVAMANI,

66 CHITRA

67 DHARMARAKSHI

68 MANI,

69 CHELLADURAI

70 SUNDARAM

71 SALAMMA

72 NEELU

73 SIVARAYAN,

74 RAMAKRISHNAN

75 AYYAPPAN

76 JANAKI

77 RAJAN



No.1311 of 2006.

78 LEELA

79 KAVIRAJAN

80 SRINIVASAN

81 DHARMARAKSHI

82 PALRAJ

83 UMADEVI

84 VINAYA CHANDRAN NAYAR,

85 THINAYA CHANDRAN NAYAR,

86 VAHITHA DEVI

87 P.MAHESWARI AMMAL,

88 M.S.KUMARI C.KALA

89 KIREESH NAYAR,

90 M.S.KUMARI C.LATHA

91 KUNJILAKSHMI AMMA,

92 VIMALAKUMARI

93 SUNANTHAKUMARI

94 KARUNAKUMAR

95 SURESH BABU



No.1311 of 2006.

96 KUMARI JEYA,

WEB COPY

(RESPONDENTS Nos.4 TO 44, 50 TO 82 ARE EXONERATED IN THE LOWER COURT HENCE RESPONDENTS 4 TO 44, 50 TO 82 ARE DISPENSED WITH)

... RESPONDENTS/RESPONDENTS
IN CMP(MD).8307/2024

1 SOMASEKARAN NAYAR (DIED)

... 1st RESPONDENT/ APPELLANT

2 MAHESWARI AMMAL,

3 KUMARI C.KALA

4 M.S.GREESAN NAIR,

5 M.S.KUMARI C.LATHA

... RESPONDENTS 2 TO 5/
LEGAL HEIRS OF 1st RESPONDENT

6 SIVADASAN NAYAR (DIED)

7 MADHAVAN NAYAR (DIED)

8 APPAVU

9 VELAYUDHAM NADAR

10 KOLAPPAN NADAR

11 HARIYANDRAN NADAR,

12 GNANACHANDRAN NADAR,

13 PONNU PILLAI NADAR,

14 MUTHUSWAMY NADAR,



No.1311 of 2006.

15 MUTHAIYAN

WEB COPY

16 SUNDARAM

17 GANESAN

18 KESAVAN

19 BHARATHI PILLAI,

20 P.R.SANADHANAN NAYAR,

21 E.R.KUNJUKRISHNAN NAYAR,

22 E.R.DHAMODHARAN NAYAR,

23 BHAGAVATHY

24 PONNAMMA PILLAI

25 CHELLAMMA PILLAI

26 GOPINATHAN NAYAR

27 SRI KANDAN NAYAR

28 RAMANI

29 LEELA PAI AMMA

30 INDIRA AMMA

31 MADHAVAN THAMBI

32 PONNAMMA PILLAI THANKACHI

33 PRASANNA THANKACHI



No.1311 of 2006.

34 BALAMMA

WEB COPY

35 CELLAN

36 SELVAMANI

37 KOCHAN

38 SANKARAN NADAR,

39 MUTHAIYAN,

40 CHELLAIYAN

41 RAGHAVAN,

42 SOMAN,

43 PONNUMANI NADAR,

44 MUTHUSWAMY NADAR,

45 PONNAMPEUMAL NADAR,

46 PONNAIYAN

47 RAMASWAMY,

48 CHINNA MANICKAM NADAR,

49 MUTHAIYAN,

50 MADHAVAN THAMBI,

51 CHELLAIYAN NADAR

52 REVATHI NADATHI



No.1311 of 2006.

53 MUTHUSWAMY,
WEB COPY
54 KOCHU KUNCHAN

55 RAMACHANDRAN NAYAR,

56 NADANKANNU NADAR,

57 MAHESWARI AMMA

58 NIRMALA

59 JANAKI,

60 VIJAYAN

61 JEYAKUMAR,

62 NESAM

63 SARASWATHI

64 KRISHNASHWARI

65 PALRAJ

66 PADMANABAN NAYAR,

67 VISALATCHI AMMA

68 CHANDRIKA PAI,

69 BALAIYAN,

70 PONNUMUTHU

71 SELVAMANI,



No.1311 of 2006.

72 CHITRA

WEB COPY

73 DHARMARAKSHI

74 MERLIN ROY

75 MANI,

76 CHELLADURAI

77 SUNDARAM

78 NEELU

79 SIVARAYAN,

80 RAMAKRISHNAN

81 AYYAPPAN

82 JANAKI

83 RAJAN

84 KAVIRAJAN

85 SRINIVASAN

86 DHARMARAKSHI

87 PALRAJ

88 UMADEVI

89 VINAYA CHANDRAN NAYAR,

90 THINAYA CHANDRAN NAYAR,



No.1311 of 2006.

91 VAHITHA DEVI

WEB COPY

92 KUNJILAKSHMI AMMA,

93 VIMALAKUMARI

94 SUNATHAKUMARI

95 KARUNA KUMAR

96 SURESH BABU

97 KUMARI JEYA,

... RESPONDENTS/RESPONDENTS
IN CMP(MD).8309/ 2024

Prayer in CMP(MD). 8307/ 2024 :

Civil Miscellaneous Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to Implead the Petitioners 1 to 18 as Repspondents 96 to 113 in the above Second Appeal in SA No.1311 of 2006.

PRAYER IN SA(MD).1311/2006:

To prefer this Memorandum of Second Appeal against the Judgment and Decree passed in A.S.No.93 of 2004 on the file of the Sub Court, Kuzhithurai dated 27.04.2006 as reversing the Judgment and Decree passed in IA.No.55 of 2004 in OS.No.60 of 1965 on the file of 1st Additional District Munsif, Kuzhithurai dated 09.08.2004.

Prayer in CMP(MD). 8309/ 2024 :

To Implead the Petitioners 1 to 18 as Repspondents 93 to 111 in the above Second Appeal in SA No.1310 of 2006 and to pass such further or other order as this Honourable Court deems fit and proper in the facts and circumstances of the case and thus render justice.

PRAYER IN SA(MD).1310/2006:

To prefer this Memorandum of Second Appeal against the Judgment and Decree passed in A.S.No.91 of 2004 on the file of the Sub Court, Kuzhithurai dated 27.04.2006 as reversing the Judgment and Decree passed in IA.No.56 of 2004 in

<https://www.mhc.tn.gov.in/judis>



No.1311 of 2006.

OS.No.60 of 1965 on the file of 1st Additional District Munsif, Kuzhithurai dated 09.08.2004.

ORDER : This Civil Miscellaneous Petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.R.NANDAKUMAR, Advocate for the petitioners in both Petitions, the court made the following order:-

C.M.P(MD)No.8307 of 2024 is filed to implead the petitioners 1 to 18 as respondents 96 to 113 in S.A(MD)No.1311 of 2006 and C.M.P(MD)No.8309 of 2024 is filed to implead the petitioners 1 to 18 as respondents 93 to 111 in S.A(MD)No.1310 of 2006.

2.The 10th petitioner herein-Kumaran has filed an affidavit on his behalf and on behalf of the proposed respondents and stated that the suit in O.S.No.60 of 1965 on the file of the District Munsif Court, Kuzhithurai filed by Samikutty Nadar and 14 others as against the predecessors-in-title and others for partition. According to them, their grandfather Ananthapalppu, son of Esaki Madan Boothathan was arrayed as 49th defendant and his sons namely Audichan Nadar, Ponnumony Nadar, Ponnampurumal and Atchuthan were arrayed as defendants 40 to 43 in the above original suit and his father's name is Ponnumony Nadar. There was a preliminary decree passed on 23.09.1982, wherein his father and his brothers were allotted 90 cents as per Exs.B.59 & 60 and his grandfather/49th defendant took mortgage in the year 1055 and 1060 ME from the jennies for 1/4th share in the suit property under



No.1311 of 2006.

WEB COPY

Exs.B6, 7, 8, 9 & 12 and he made development in the above property. After the death of 49th defendant, the defendants 40 to 43 being the sons of 40th defendant, are entitled to the right of their father 1/4th share in the suit schedule property under time barred mortgage and 1/4th share would come to 243 cents. As against the judgment and decree passed in O.S.No.60 of 1965, dated 23.09.1982 on the file of the District Munsif Court, Kuzhithurai, the defendants 32, 64 to 67 ie., Sivadhasan Nair, Madhavan Nair, Somasekara Nair, Manikandan Nair have preferred an appeal in A.S.No.173 of 1983 on the file of the Sub Court, Kuzhithurai and the first Appellate Court partly allowed the appeal and modified by reducing the defendants 40 to 43's share of 90 cents into 77-1/2 cents by the judgment and decree dated 10.09.1990 on the file of the Sub Court, Kuzhithurai. Aggrieved over the judgment and decree in A.S.No.173 of 1983, the defendants 40 to 43 preferred Second Appeal in S.A.No.1016 of 1991 on the file of this Court and the same was allowed and restored the defendants 40 to 43 shares of 90 cents and this Court held that relating to the mortgage right, since it is not a subject matter in the second appeal, it was not discussed and decided. Thus, the trial Court decreed with regard to the defendants 40 to 43 shares of 90 cents and 1/4th share in the suit property under time-barred mortgage is restored and confirmed.

3.According to the petitioners herein, one Kumara Pillai/5th defendant has been



No.1311 of 2006.

WEB COPY

allotted 40 cents in the preliminary decree in O.S.No.60 of 1965 on the file of the District Munsif Court, Kuzhithurai and further his wife Kunjulakshmi has got title for 1 acre 44 cents under the sale deeds in Exs.B.116, 118, 119 and 123 and the above properties have been conveyed to Kunjulakshmi with the liability to discharge the mortgage right of 49th defendant. But Kunjulakshmi failed to discharge the mortgage and hence, she does not perfect title under Exs.B.116, 118, 119 and 123 and the above property became time barred and unredeemed mortgage, further, the above property comes under 1/4th right of time-barred and unredeemed mortgage right in the suit schedule property. Thereafter, 66th defendant Ramachandran Nair, one of the sons of the fifth defendant Kumara Pillai, filed an application in I.A.No.55 of 2004 for passing a secondary preliminary decree under Order 20 Rule 18 of C.P.C in O.S.No.60 of 1965 on the file of the I-Additional District Munsif Court, Kuzhithurai. In the above I.A., the defendants 40 to 43 were shown as the respondents 55 to 58, but, unfortunately, the summons were not properly served upon them. Hence, they could not contest the above I.A.No.55 of 2004 for secondary preliminary decree, hence, behind the back of the respondents 55 to 58, the secondary preliminary decree was passed in I.A.No.55 of 2004 on 05.08.2004. Challenging the secondary preliminary decree, respondents 49 and 81 have preferred the first appeal in A.S.No.91 of 2004 on the file of the Sub Court, Kuzhithurai, wherein 42nd defendant/57th respondent-Ponnamperumal Nadar



No.1311 of 2006.

WEB COPY

alone was shown in the cause-title as 39th respondent and other respondents were not shown as respondents despite they are parties to the earlier proceedings as respondent Nos.55, 56 and 58. The Sub Court allowed the first appeal in A.S.No.93 of 2004 and set aside the secondary preliminary decree passed in I.A.No.56 of 2004, dated 09.08.2004 on the file of the I Additional District Munsif Court, Kuzhithurai.

4.Challenging the judgment and decree passed in A.S.No.93 of 2004, 66th defendant Ramachandran Nair had preferred S.A(MD)No.1311 of 2006 and likewise, Somaskearan Nair/65th defendant had preferred Second Appeal in S.A.(MD)No.1310 of 2006 as against the judgment and decree passed in A.S.No.91 of 2004 reversing the judgment and decree passed in I.A.No.56 of 2004 on the file of this Court.

5.According to the petitioners, though they are the legal heirs of the defendants 40 to 43, the petitioners herein were not arrayed as parties and shown in the cause title, as they are all the contesting parties in O.S.No.60 of 1965 on the file of the District Munsif Court, Kuzhithurai. In the above Second Appeals, their forefathers right of 1/4th share in the suit schedule property comes under unredeemed time-barred mortgage right. Hence, the petitioners herein are proper and necessary in the above Second Appeals for proper adjudication. If these impleading petitions are not allowed, the petitioners herein would lose the valuable right of 1/4th share in the Second Appeals and prayed for allowing these petitions.



No.1311 of 2006.

WEB COPY

6.The learned counsel appearing for the first respondent/appellant in S.A(MD) No.1310 of 2006 and the learned counsel appearing for the fourth respondent/fourth appellant in S.A(MD)No.1311 of 2006 had filed a detailed counter-affidavit.

7.The learned counsels appearing for the first respondent and the fourth respondent would submit that the shares of the petitioners herein had already attained their finality and they are entitled to only to 90 cents and not entitled to 1/4 share of the time-barred mortgage. The same was declared in the preliminary decree passed in O.S.No.60 of 1965 on the file of the I Additional District Munsif Court, Kuzhithurai. Further, the proposed petitioners have not filed any appeal against the supplementary preliminary decree passed in I.A.Nos.55 and 56 of 2004 in O.S.No.60 of 1985. The mortgage rights of these petitioners' predecessors were not discussed either in the trial Court or even in the first Appellate Court. During the pendency of the final decree proceedings, these petitioners' predecessors filed an Interlocutory application in I.A.No.443 of 1992 seeking to correct the preliminary decree and to include their 1/4th share of mortgage right, however, the same was dismissed. Subsequent to the same, the petitioners' predecessors had also filed another application in I.A.No.444 of 1992 seeking to correct the supplementary preliminary decree and to include their 1/4th share in the mortgage right, the same was also dismissed. Against the dismissal of the applications, they have not preferred any



No.1311 of 2006.

appeal. At this juncture, when the parties herein before this Court are fighting between the legal heirs of Kumara Pillai and Kunjulakshmi, the petitioners have no right to interfere with the inter se dispute between the legal heirs and they are third parties to the proceedings. All the rights have already been decided in O.S.No.60 of 1965 on the file of the I Additional District Munsif Court, Kuzhithurai in the preliminary decree and the supplementary preliminary decree has been challenged and the same is pending and they have no prejudice before this Court for deciding the issue between the legal heirs of Kumara Pillai and Kunjulakshmi. According to the learned counsel, when the petitioners' right had already attained finality and they were entitled only to 90 cents and the decision regarding 1/4th share, there was no decree as such and the same was declared in the preliminary decree passed in O.S.No.60 of 1965 on the file of the I Additional District Munsif Court, Kuzhithurai, the petitioners have not filed any appeal against the supplementary preliminary decree passed in I.A.Nos.55 and 56 of 2004 in O.S.No.60 of 1965. Hence, they need not be impleaded as the respondents and prayed for dismissal of these petitions.

8.Heard the learned counsel appearing on either side.

9.On going through the averments, it is seen that the dispute arising in this particular suit between the legal heirs of Kumara Pillai and Kunjulakshmi regarding partition in their own share of 1 acre 84 cents, in which, the first



No.1311 of 2006.

WEB COPY

respondent/appellant in S.A(MD)No.1310 of 2006 filed an application in I.A.No.55 of 2004 on the file of the learned I Additional District Munsif Court, Kuzhithurai as well as one Somasekaran Nair filed an application in I.A.No.56 of 2004 seeking supplementary preliminary decree allotting 1/5th share and the learned Court, considering the earlier proceedings in A.S.No.173 of 1983, granted a decree as prayed for in both the applications. Aggrieved over the same, respondents 1 and 47 jointly filed the first appeals in A.S.Nos.91 & 93 of 2004 on the file of the Sub Court, Kuzhithurai. The first Appellate Court allowed the appeal reversing the judgment and decree of the trial Court. Against which, the appellants in the Second Appeals preferred the above Second Appeals. When that being the case, the petitioners have got no say in these Second Appeals being filed between the legal heirs of Kumara Pillai and Kunjulakshmi, this Court is of the view that the petitioners cannot be impleaded themselves in these Second Appeals. It is also brought to the knowledge of this Court that in the year 2007, the petitioners had already filed a similar application in M.P(MD)No.1 of 2007, which was filed by another counsel, who had not contested the same and later point of time, the same was dismissed as withdrawn and it is estopped from filing another petition for the similar cause of action.

10.In view of the abovestated facts and circumstances, this Court is not inclined to interfere in this matter about any rights and these petitions are dismissed. It is



No.1311 of 2006.

made clear that the impleading petitioners cannot seek more than what has been

WEB COPY

stated in the applications for impleading.

sd/-
16/10/2024

/ TRUE COPY /

/10/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PS
TO
1 THE I ADDITIONAL DISTRICT MUNIF,
KUZHITHURAI.

2 THE SUBORDINATE JUDGE,
KUZHITHURAI.

+2 CC to M/s.J.ANANDHAVALLI, Advocate (SR-12571 & 12572 [I] dated
17/10/2024)

ORDER
IN
C.M.P(MD)Nos.8307 & 8309 of 2024
in
S.A(MD)Nos.1311 & 1310 of 2006
Date :16/10/2024

SA/MMS/SAR. /28.10.2024/21P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.