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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No. 88 of 2021
and
C.M.P(MD)No. 1399 of 2021

1. A.Sankaralingam
2. A. Balasubramanian
3. R. Maharani
4. R.Malar Manimegalai
5. A.Pandian
6. P. Arulkumar
7. P. Madhan Kumar
- P. Vasuki (Died)
8. Minor Aparajithvelan
 Represented by His Guardian, Pandian.
9. B. Mukesh Prabu

... Appellants

Vs.

A.Vasimalai Perumal

... Respondent

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree of the Lower Appellate Court/ Subordinate Judge, Thirumangalam, dated 03.09.2020 passed in A.S.No.104 of 2019 by confirming the Decree and Judgment passed by the Lower Court /



District Munsif cum Judicial Magistrate, Peraiyur in O.S.No.33 of 2013 dated 01.10.2019 and allow the present Second Appeal.

For Appellants : M/s.K.Jagadeesan, for A-1 to A-4,
A-8 and A-9
M/s.K.S.Seenivasan, for A-5 to A-7

For Respondent : Mr.T.Ponkumar

JUDGEMENT

This Second appeal is filed by the defendants 1 to 4, 6 to 9 to set aside the Judgment and Decree of the Subordinate Court, Thirumangalam, dated 03.09.2020 passed in A.S.No.104 of 2019 by confirming the Decree and Judgment passed in O.S.No.33 of 2013, dated 01.10.2019 on the file of the District Munsif cum Judicial Magistrate, Peraiyur.

2. The defendants are the Appellants and the plaintiff is the Respondent herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendants.

3. The plaintiff has filed a suit in O.S.No.33 of 2013 for declaration to declare that item No.1 of the 'A' schedule property belongs to the plaintiff and the Defendants 1 & 2 and to grant Preliminary Decree for partition



of the suit 'A' schedule property and allot 1/3 share to the plaintiff and to declare that 'C' schedule property is a pathway of the plaintiff and the defendants and also seeking permanent injunction for restraining the defendants from peaceful possession and enjoyment of the same. The said suit was allowed. Against which, the Defendants have preferred an appeal in A.S.No.104 of 2019 and the same was dismissed. Against the dismissal, the Second Appeal is preferred.

4. Pending this Second appeal, the plaintiff has filed an affidavit stating that the parties have entered into compromise and prayed that the affidavit may be recorded and the Second appeal may be disposed of as per compromise entered between the parties. It is stated in the said affidavit that the Second Appeal may be allowed in favour of 6th defendant as far as Item No.1 in the 'A' schedule property is concerned. Further, the Second Appeal may be allowed in favour of the defendants 6 to 9 in respect of 'B' schedule property pertaining to common pathway. As far as the Item No.2 in 'A' schedule is concerned, the Second Appeal may be dismissed as against the defendants 3 to 9 and the suit may be decreed in favour of defendants 1 & 2 and plaintiff. The aforesaid affidavit is culled out hereunder:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(MADURAI BENCH)
(Appellate Jurisdiction)

S.A.(MD)No. 88 of 2021

1. A. Sankaralingam,
S/o Mr. Arunachalam Pillai,
Door No. 9/1-24A1, usilampatti court new street,
Usilampatti, Madurai District.

2. A. Balasubramanian,
S/o Mr. Arunachalam Pillai,
Door No. 11/1-224, Madurai road,
Usilampatti, Madurai District.

3. Mrs. M. Maharani,
W/o Mr. Rathinavelu,
Karpaga Nagar, Avaniyapuram,
Madurai District.

4. Mrs. Malar Manimegalai,
Karpaganagar, Avaniyapuram,
Madurai District.

5. A. Pandian,
S/o Mr. Arumugam,
Elumalai, Perayur Taluk,
Madurai District.

6. P. Arulkumar,
S/o Mr. Pandian,
Karpaga Nagar, Avaniyapuram,
Madurai District.

7. P. Madhan Kumar
S/o Mr. Pandian,
Karpaga Nagar, Avaniyapuram,
Madurai District

: Appellants I to 7/Appellants
I to 6 & 8/Defendants 1 to 4, 6, 7, 9

Handwritten signature



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Mrs. Vamsi (Died)
E. Minor Aparajitha Velan,
Rep by his Guardian,
Mr. Pandian,
Karpaga Nagar, Avaniyapuram,
Madurai District.

© Mr.B.MukeshPrabhu,
S/o Mr.Balasubramanian,
T.V.S Nagar, Madurai.

Appellants 8,9/LRs of the 7th
Appellant/LRs of the 8th Defendant.

-Vs-

A Vasimalai Perumal,
S/o Mr. Arunachalam Pillai,
Anna Street, Elumalai,
Madurai district.

: Respondent /Respondent /Plaintiff.

AFFIDAVIT OF A.VASIMALAI PERUMAL,

I A.Vasimalai Perumal, S/o. Arunachalam Pillai, Hindu, aged about 76 years, residing at No 29A, Per Arignar Anna Street, Elumalai, Peraiyur Taluk, Madurai district, now temporarily come down to Madurai and do hereby solemnly affirm and sincerely state as follows:-

1. I am the respondent / Plaintiff herein and as such I am well aware of the facts and circumstances of the case.

2. I respectfully submit that the Appellants have filed the above said second Appeal as against the concurrent findings passed in O.S.No. 33 of 2013 on the file of Learned District Munsif Cum Judicial Magistrate Peraiyur by its order dated 01.10.2019 and in A.S.No. 104 of 2019 on the file of the Learned Subordinate Court, Thirumangalam by its order dated 03.09.2020 before this Hon'ble Court.

M. Vasimalai Perumal



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3. I respectfully submit that before filing the suit in O.S.No. 33 of 2013 on the file of Learned District Munsif Cum Judicial Magistrate Peraiyur, the appellants 3 and 4 / defendants 3 and 4 who is none other than my and appellant's 1 and 2 sisters has executed the sale deed dated 14.12.2002 wide Registered Doc No 1 of 2003 in favour of the 5th defendant namely Mrs. Selvi. During the pendency of the above suit the said Mrs.Selvi died and legal heirs were also impleaded as Defendants 6 to 9. While, during the pendency of A.S.No. 104 of 2019 on the file of the Learned Subordinate Court, Thirumangalam, the legal heirs of the deceased 5th defendant namely defendants 7 to 9 has executed release deed dated 29.6.2020 wide Registered Doc No 2776 of 2020 in favour of 6th defendant namely Pandian in respect of 1st item property mentioned in schedule A of suit property.

4. I respectfully submit that during pendency of the above second appeal, on 23/02/2024 the 5th appellant namely Mr Pandian has executed a sale deed in favour of me in respect of 1st item property mentioned in schedule A of suit property. Under such circumstances and in view of the settlement arrived between the 5th appellant and me, I have no objection to allow the second appeal in favour of 5th appellant / 6th defendant herein in respect of 1st item property mentioned in schedule A of suit property.

5. I respectfully submit that in view of the settlement arrived between the 5th appellant and me I have no objection to allow the above second appeal in favour of the defendants 6 to 9 / appellants 5 to 9 herein in respect of 'B' schedule of suit property.

6. I respectfully submit that in respect of 2nd item property mentioned in schedule A of suit property the above second appeal may be dismissed as against appellants 3 to 9 / defendants 3 to 9 and suit may be decreed in favour



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of appellants 1 and 2 herein and respondent herein / Plaintiff and Defendants 1 and 2.

For the reasons stated above, it is prayed that this Honourable court may be pleased to record my affidavit and dispose the above second appeal as indicated above and thus render justice.

Solemnly affirmed at Madurai
On this the 10th day of March, 2024
And signed his name in my presence.
Page No : 7
Costs : nil

[Signature]
Before me
[Signature]
Advocate, Madurai
K. Vignesh
18/04/2024
No. 5/101, Suresh complex
Ulagan, Madurai
9692433029



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5. Accordingly, this Second Appeal is disposed of based on the compromise stated supra. However, this compromise will not attract the principles of *resjudicata* for the persons who had purchased the property or who would purchase property. Hence, the issue is left open among the parties. No Costs. Consequently, connected miscellaneous petition is closed.

19.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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1. The Subordinate Court,
Thirumangalam.
2. The District Munsif cum Judicial Magistrate Court,
Peraiyur.
3. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
S.A(MD)No. 88 of 2021

19.03.2024