



C.M.A.No.234 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.01.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.234 of 2004

and

C.M.P.No.807 of 2004, M.P.(MD).Nos.1 of 2007, 1 of 2008,
1, 2, 3 of 2009 and C.M.P.(MD).Nos.3025 & 3249 of 2005

1.J.Kamali

2.Manuel

3.Chellamuthu

4.Lyssal

5.Selvi

6.Majusha (minor)

7.Shiji (minor)

8.Shaji (minor)

*(Minors 6, 7 & 8 are represented by mother
and natural guardian, the 5th appellant)*

.. Appellants

Vs.

1.Kunjammal (Died)

2.Mariyanesam

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3.Sivasankaran

4.Balakrishnan

5.Rajamony

6.Paulmony (Died)

7.Philominal

8.Nesamony

9.Valsala Rose

10.Ponnumony

11.Natarajan

12.Parameswaran Pillai

13.Yessai (Died)

14.Palamma

15.Thanislaslas

16.Christudas

17.Aruldhass

18.Selvaraj

19.Baby

20.Ravoo (minor)



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21.Sumithra (minor)

22.Vasantha (minor)

23.Latha (minor)

*(Respondents 20 to 23 are represented by
mother and natural guardian, the 19th respondent)*

24.Lookose

25.Rabi

26.Nahomi

27.Daisy

28.Saji

29.Raji

30.Vijila

31.Sujila

32.Pryson

33.Pilison (minor)

*(minor represented by mother and
natural guardian, the 27th respondent)*

34.Kollappan

35.Anitha

36.Anish



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37.Salinraj

38.Jose

39.Latha

40.Vanaja

41.Lyla

42.Lalitha

43.Sunil

44.Rani

45.Thankam

46.Rasina

47.Pilominal

48.Vimalarani

49.Christal Mary

.. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of Civil Procedure Code, to allow the appeal and set aside the judgment and decree passed in A.S.No.69 of 1999 and Cross Appeal on the file of Sub-Court, Kuzhithurai reversing the judgment and decree passed in I.A.No. 1143 of 1985 in O.S.No.444 of 1975 on the file of Principal Additional District Munsif Court, Kuzhithurai.



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For Appellants : Mr.C.Godwin

For Respondents : R-1, R-6 & R-13 - Died
R-2 to R-5 and R-7 – refused (affixed)
R-8 to R-12, R-14 to 18 &
R-24 to R-49 – exparte (vide in batta)
No appearance for R-19 to R-23

JUDGMENT

The present Civil Miscellaneous Appeal has been filed against the judgment and decree passed in A.S.No.69 of 1999 and Cross Appeal on the file of the Sub Court, Kuzhithurai, reversing the judgment and decree passed in I.A.No.1143 of 1985 in O.S.No.444 of 1975 on the file of the Principal Additional District Munsif Court, Kuzhithurai.

2. A suit for partition filed in the year 1975 is yet to reach finality since the First Appellate Court in the final decree application, considering the plea of the 23rd defendant, had remanded the matter back to the Trial Court to re-visit the allocation of shares as per the preliminary decree.



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3. The short point involved in this case as vividly narrated by the appellants/petitioners herein is that the partition suit ended in allotting 6/7th share in 1/24 share of the suit property in favour of the appellants/petitioners. When the final decree application was taken out under Order 20 Rule 18 and Order 26 Rule 13 CPC in I.A.No.1143 of 1985, an Advocate Commissioner was appointed to effect division and he has filed his report, which was marked as Court Exhibits. When the apportionment of the property by metes and bounds suggested by the Advocate Commissioner, that was not acceptable to the 23rd defendant, A.S.No.69 of 1999 was filed, in which the learned Appellate Judge had thought fit that the matter must be remanded back so as to protect the portion of the property already in occupation of the 23rd defendant.

4. Being aggrieved, the present Civil Miscellaneous Appeal is filed stating that the objection raised by the 23rd defendant is frivolous and untenable. For a flimsy reason, the matter has been remanded back. When rest of the respondents/defendants had no objection in apportioning the property as per the preliminary decree, the 23rd defendant alone had put spokes in execution of the final decree for untenable reason.



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5. There is no representation for the 19th respondent/23rd defendant.

Pending appeal, some of the respondents died and their legal representatives were brought on record. Presently, 49 respondents are arrayed as parties to the Civil Miscellaneous Appeal.

6. This Court on perusing the order passed by the First Appellate Court finds that the reason for remanding the matter back is very general in nature and not specific to any particular property, whereas, the other defendants have no difficulty in sharing the property as per the preliminary decree. However, the plea of the 19th respondent/23rd defendant had been taken note of and the entire report of the Advocate Commissioner has been set at naught.

7. This Court does not find any justifiable reason for remanding the matter back to the Trial Court. If at all any portion of the property, which has been allotted to others, is required to be allotted to the 19th respondent/23rd defendant, appropriate alternate arrangement must be made within the parties amicably. For the sake of one respondent, the entire decree need not be upset, more particularly prejudicing the appellants



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herein. Therefore, the judgment and decree passed by the Sub Court, Kuzhithurai in A.S.No.69 of 1999 dated 20.06.2003 is set aside and the judgment and decree passed by the Principal Additional District Munsif Court, Kuzhithurai in I.A.No.1143 of 1985 in O.S.No.444 of 1975 dated 04.08.1999 is restored. Accordingly, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

- 1.The Sub Court,
Kuzhithurai.
- 2.The Principal Additional District Munsif Court,
Kuzhithurai.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

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