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S.A. No. 111 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2025

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 111 of 2011

1.Rathinabal (died)

2.Radha Bai

3.Chandira (died)

4.Athilakshmi (died)

(Appellants 3 and 4 are recorded as LRs of the deceased first appellant viz., Rathinabal vide order of Court dated 29.01.2020 made in M.P.No.1 of 2015)
(A3 and A4 died. A2 is only legal heir of the deceased A3 & A4 vide Court order dated 06.01.2025 in C.M.P.No.80 of 2024)

...Appellants

Vs.

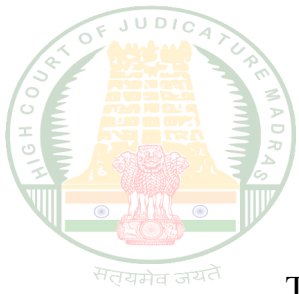
Jamunabai

... Respondent

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 18.08.2010 made in A.S. No. 10 of 2009 on the file of the Principal District Judge, Chengalpattu, confirming the judgment and decree dated 29.12.2008 made in I.A. No. 301 of 2006 in O.S. No. 81 of 1999 on the file of the Subordinate Court, Madurantakam.

For Appellants : A1-died
Mr.Haribabu (R2)

For Respondent : Mr.K.Hariharan



JUDGMENT

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The appellant is the second defendant. The plaintiff has filed a suit against the defendants 1 to 5 for seeking the relief of partition of 1/6th share in the suit properties and 7/12th share in Well in Survey No.35/1 now subdivided as 35/1B of Chithamani Village along with mesne profits.

2. The trial Court has decreed the suit and passed a preliminary decree in respect of 1/6th share to the plaintiff along with 7/12th share. The defendants 2 to 5 have preferred the first appeal and the first appellate Court has dismissed the appeal and confirmed the judgment of the trial Court and subsequently final decree has also been passed. Now the second defendant has failed this second appeal challenging the final decree.

3. It is learnt from the representation of the learned counsel for the appellant that the very same appellant has filed an appeal challenging the final decree also, but the same has not yet been numbered due to the default on the part of the appellants to pay the cost. It is learnt that the the cost has been imposed to condone the delay involved in filing the second appeal and due to the non-payment of the cost, the appellants have lost the benefit of the order



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passed in the petition to condone the delay. As such there is no second appeal pending against the preliminary decree for partition passed in favour of the plaintiff.

4. Even in this second appeal, the appellants have raised the question of law with regard to the 7/12th share determined in the suit well. No doubt, the determination of the share has become conclusive once the preliminary decree has attained finality. In the name of preferring an appeal against the final decree the appellants have raised the very same question of law challenging the preliminary decree. What the appellant cannot do directly cannot be allowed to do indirectly as well.

5. In the result, this second appeal is rejected. No costs.

21.01.2025

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
Maya



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To

1. The Principal District Judge, Chengalpattu.
2. The Judge, Subordinate Court, Madurantakam.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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R.N.MANJULA, J.

Maya

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