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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)No. 136 of 2012
and C.M.P(MD)No.18364 of 2024
and M.P(MD)No.1 of 2012

Meenal

...Appellant

Vs.

1. Karmegam (Died)
2. Chinnaya
3. Sethuraman
4. Kaliasammal
5. Ramuservai
6. Saravanan
7. Sethu Ammal
8. Muthukarakkal
9. Pappa
10. Palanimurugan

... Respondents

[Respondents 7 to 10 are brought on record as LRs of the deceased 1st respondent vide Order of this Court, dated 19.12.2024]



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to allow this Second Appeal and thereby set aside the Judgment and Decree dated 15.11.2011 made in A.S.No.8 of 2009 on the file of the Subordinate Court, Sivagangai reversing the Decree and Judgment in O.S.No.35 of 2000 dated 12.12.2008 on the file of the District Munsif Cum Judicial Magistrate Court, Ilayangudi, with Costs throughout.

For Appellants : M/s.S.Parthasarathy

For Respondents : R-1 Died

Mr.V.Meenakshi Sundaram,
M/s.G.Mohan Kumar, for R-2

R-7 to R-10 – No appearance

JUDGMENT

This Second Appeal is filed to set aside the Judgment and Decree dated 15.11.2011 made in A.S.No.8 of 2009 on the file of the Subordinate Court, Sivagangai reversing the Decree and Judgment in O.S.No.35 of 2000 dated 12.12.2008 on the file of the District Munsif Cum Judicial Magistrate Court, Ilayangudi.



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2. The 2nd Defendant is the Appellant and the Plaintiffs and Defendants 1, 3 to 5 are the Respondents. For the sake of convenience, the parties shall be referred to as Plaintiffs and Defendants.

3. The suit in O.S.No.35 of 2000 was filed for declaration and injunction. The plaintiff had relied on the sale deed executed by Muniyandi to Soman, dated 09.06.1961, another sale deed dated 03.09.1973 and another sale deed executed by Raman and others in favour of Alagammal dated 12.12.1994.

4. The 2nd defendant/appellant herein has filed a petition in C.M.P(MD)No.18364 of 2024 to frame the following additional substantial questions of law:

1. *Whether the First Appellate Court is right and justified in taking into consideration, the report and plan submitted by the Second Commissioner, when the same has not been brought into evidence by either parties before the trial Court?*
2. *Whether the First Appellate Court is right and justified in considering the second report and plan submitted by the*



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Commissioner without scrapping the first report and plan submitted by the Commissioner and marked by the trial Court as Ex.C.1 and Ex.C.2?

3. *Whether the Judgment and decre of the 1st Appellate Court is sustainable which is solely based on the Second Report and Plan submitted by the Commissioner, when the same is not included in the document list found in the Judgment of the 1st Appellate Court and in such circumstances, is it not the position of law that the said second report and plan submitted by the Commissioner has no probative evidentiary value?*
4. *Whether the 1st Appellate Court is right and justified in marking Ex.A.18 & Ex.A.19 in the appellate stage without any speaking order in the Judgment when the same has been received vide the Stamping that the said documents are received in evidence on the date of Judgment by the 1st appellate Court without there being any corroboration?*

5. Admittedly, the disputed property was classified as Natham property. The plaintiffs have filed a petition for appointment of Advocate Commissioner and was appointed, thereafter, the Advocate Commissioner has filed a report and plan which were marked as Exs.C1 & C2. Both the plaintiffs



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and defendants had pointed out the defects in the Advocate Commissioner's report since he has not measured the entire property as per the sale deed. Hence, the Trial Court had reissued the warrant to the same Advocate Commissioner. He has expressed his unwillingness. Another Advocate Commissioner was appointed who has filed a report and plan and the same were marked Exs.C.3 & C4. But, the contention of the 2nd defendant/appellant is that the same were not marked as per the procedure. The Trial Court has not taken Exs.C.3 and C4 for consideration and dismissed the suit. But the Appellate Court has taken Exs.C.3 & C4 and decreed the suit. The contention of the appellant is that without scrapping the Ex.C.1 & C2, the Commissioner Report in Ex.C.3 & C4 cannot be taken on file. Further, there are discrepancies in the two Advocate Commissioners' report and plan.

6. After hearing the rival submissions and by taking the submissions into consideration, this Court is of the considered opinion that when proper opportunity has not granted while taking Exs.C.3 & C4. Further it is not been marked as per procedure. Both the commissioners report have discrepancies in



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measurements. Therefore, Exs.C.1 & C.2 and Ex.C3 & Ex.C4 ought to be scrapped and accordingly scrapped.

7. The plaintiffs have already filed a petition in I.A.No.405 of 2009 before the Trial Court for appointment of fresh Advocate Commissioner. The Trial Court shall take the same on file to appoint fresh Advocate Commissioner. The parties are directed to produce the sale deed to the Advocate Commissioner and any other relevant revenue records available with them. Then the Advocate Commissioner shall carry out the warrant. Thereafter, the parties shall file their objections to the said report, if any.

8. The Learned Counsel appearing for the plaintiffs submitted that they had already filed a petition in I.A.No.309 of 2011 for marking of documents Exs.A.18 & 19, however the same were not marked, as per procedure. Thereafter, the Exs.A.18 & 19 was also erased. If necessary, both the parties shall submit the



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documents afresh. The Trial Court after affording opportunity to the defendants, if need be, the same may be marked.

9. The Trial Court is directed to complete the entire proceedings, within a period of 8 months from the date of receipt of a copy of this Judgment.

10. Accordingly, this Second Appeal is allowed in above terms. No Costs. Consequently, C.M.P(MD)No.18364 of 2024 is allowed and M.P(MD)No. 1 of 2012 is closed.

27.01.2025

Index : Yes / No
NCC : Yes / No
KSA

TO:

1. The Subordinate Court, Sivagangai.
2. The District Munsif Cum Judicial Magistrate Court, Ilayangudi.
3. The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Judgment made in
S.A.(MD)No. 136 of 2012

Dated:27.01.2025