



A.S.(MD)No.79 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**A.S.(MD)No.79 of 2019
and C.M.P.(MD)No.4414 of 2019**

1.Arulmathu Johnson (Died)

2.Reginald E.C.Johnson

... Appellants

(Memo dated 08.08.2023 in USR No.26360 is recorded, as 1st appellant died and 2nd appellant and sole respondent, who are already on record, are recorded as LRs of the deceased 1st appellant)

-VS-

Mariamamma Frankline

... Respondent

PRAYER: Appeal Suit filed under Section 96 of C.P.C against the decree and judgment dated 30.01.2019 rendered in O.S.No.21 of 2018, on the file of the learned IV Additional District Judge, Madurai.

For Appellants : Mr.S.Subbiah, Senior Counsel
for Mr.K.Sekar

For Respondent : Mr.Mathew Moses



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JUDGMENT

(Judgment of the Court was delivered by ***C.V.Karthikeyan, J.***)

This Appeal Suit had been filed by the plaintiffs in O.S.No. 21 of 2018, on the file of IV Additional District Court, Madurai, aggrieved by the judgment dated 30.01.2019.

2. O.S.No.21 of 2018 had been filed by the plaintiffs seeking a preliminary decree of partition directing the division of the schedule mentioned properties by metes and bounds and to allot 1/3rd share to each one of the two plaintiffs and for costs of the suit. The schedule of the property is land and building at Door No.3, P.T.Rajan 3rd Street, Chokkikulam Village, Madurai Town, measuring about 4816 sq.ft. The first plaintiff was the mother of the second plaintiff and mother-in-law of the defendant.

3. It had been contended that the property was the self acquired property of Harry S.Johnson, the late husband of the first plaintiff and the father of the second plaintiff and father-in-law of the defendant. The relationship among the parties are not disputed. Harry



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S.Johnson died on 01.08.1967, leaving behind the two plaintiffs and his other son Franklin Johnson as his legal representatives. The said Franklin Johnson died on 19.01.2014 leaving behind the defendant as his legal representative.

4. The learned District Judge had taken into consideration I.A.No.379 of 2018, which had been filed by the defendant under Order 32 Rule 15 of CPC to ascertain whether the first plaintiff was a person of unsound mind. The learned District Judge allowed the said application and had directed the appearance of the first plaintiff before him. Unfortunately, the first plaintiff did not appear before the Court.

5. In view of that particular fact, taking recourse to Order 10 Rule 4(2) of CPC, the learned District Judge had proceeded to dismiss the suit owing to non appearance of the first plaintiff.

6. We hold that the learned District Judge ought to have noted that the second plaintiff was very much available. The suit could not have been dismissed in entirety. Furthermore, the procedure under Order 32 contemplates that when it is alleged that either the plaintiff or



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the defendant is a person of unsound mind, then in the first instance, it requires to appoint a Court guardian and thereafter, get an opinion from the medical board.

7. We however, take judicial notice of the further fact which had occurred after the filing of the present first appeal, namely, that the first appellant/first plaintiff in the suit had died on 06.06.2023 and therefore, the suit can now be proceeded only as between the surviving appellant and the respondent herein which would be as between the second plaintiff and the defendant. The issue of division of the property will have to be examined on the basis of the provisions of the Indian Succession Act, 1925. Since owing to these supervening circumstances, which had occurred pending the appeal, the order of the trial Court has now become otiose, there is no longer a requirement to examine whether the first appellant/first plaintiff was a person of sound mind or unsound mind. The suit will have to be proceeded with in accordance with the procedure as enunciated under the Code as any other partition suit.

8. Recording the fact of the death of the first appellant, we would set aside the judgment of the trial Court and remand the matter



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back to the trial Court for adjudication to consider all issues, which had arisen on the basis of the pleadings between the parties.

9. Accordingly, the judgment of the trial Court in O.S.No.21 of 2018 dated 30.01.2019 is set aside and the appeal suit is allowed. The matter is remanded back to the trial Court to consider all issues in the manner known to law. The parties viz., the second plaintiff and the defendant are directed to appear before the trial Court on **24.11.2025**. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[C.V.K., J.] [R.V., J.]
24.10.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/No
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To

1. IV Additional District Judge, Madurai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court.



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**C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.**

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