



C.M.P.(MD).No.7006 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.04.2025

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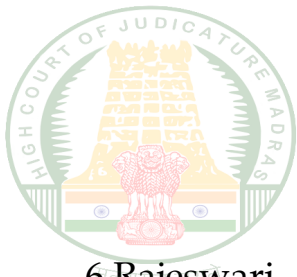
THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.P.(MD).No.7006 of 2024
in S.A.No.2186 of 2002

- 1.Gabriel (Died)
- 2.Thersappu (Died)
- 3.Therasammal
- 4.Nelson (Died)
- 5.Thulasi
- 6.Justin
- 7.Rajam
- 8.Mary
- 9.Bijimon (Minor)
- 10.Sijimon (Minor) ... Petitioners No.1 to 10/ Appellants No.1 to 10
(Minors 9 & 10 are represented by the 8th petitioner/Mother & the natural guardian)

Vs.

- 1.Devaki (Died)
- 2.Raveendran
- 3.Surendran
- 4.Bhuvendran (Died)
- 5.Ambika (Died)



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6.Rajeswari

7.Bhaskaran

8.B.Aravind

9.Anitha

10.Birathika

11.Vinod Kumar C.I.

... Respondents/Respondents

PRAYER in C.M.P.(MD).No.7006 of 2024: Civil Miscellaneous Petition is filed under Section 100 & 101 r/w 151 of Civil Procedure Code, to accept the additional memorandum of grounds of second appeal with substantial question of law and frame the substantial question of law pointed out therein as additional substantial question of law in the above second appeal.

For Petitioners : Mr.C.Dhanaseelan

For Respondents : Mr.K.N.Thampi for RR2, 3, 6, 8 to 11

ORDER

At the time of admission on 14.02.2003, the following substantial questions of law were framed by this Court.

1. Whether the findings in A.S.No.109/79 that the extension of the house by defendants 1 & 2 was not with the permission of Singarayan will operate as Res Judicata in the present suit?
2. Have not defendants 1 and 2 prescribed title by adverse possession when the plaintiffs and their predecessors in title did not file any title suit within 12



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years from the date of delivery of the property through Court in O.S.No.1471/1107 ME?

2.Now, when the matter was posted for final hearing the present civil miscellaneous petition in C.M.P.(MD).No.7006 of 2024 is filed by the appellants herein seeking leave of this Court to raise additional grounds, based upon which, the appellants want to frame additional substantial question of law as mentioned in the petition.

3.Simultaneously, another civil miscellaneous petition in C.M.P.(MD).No.11720 of 2024 is filed by the appellants herein seeking the leave of this Court to produce additional evidence under Order 41 Rule 27 of Civil Procedure Code enclosing those documents. Since the above said C.M.P.(MD).No.11720 of 2024 can be taken up only along with main appeal it is kept pending. So far as C.M.P.(MD).No.7006 of 2024 is concerned this order is passed.

4.The learned counsel for the petitioners would submit that the suit itself has to be thrown out of the Court because of the fraud played by the plaintiffs. According to him, the fraud starts from the description of property. By suppressing the extent mentioned in the previous suit, the present suit is filed deleting some portion. Apart from that he would also submit that the settlement deed, dated 02.07.1960, executed by her monther-in-law namely Mariamma is suppressed. This



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suppression was made purposely to get over the averment that Vaithyanathan Anthony was delivered with property with under Ex.A1, with Mariamma, who is also one of his sister. Suppressing the settlement deed, suit is filed as if Singarayan alone got the properties of Vaithyanathan Anthony. Subsequent to the settlement deed, the first plaintiff entered into various deeds with various persons. To show the same they produced the certified copies of those transaction in C.M.P.(MD). No.11720 of 2024, which is filed seeking permission to file additional evidence. If this additional grounds are permitted to be raised and considered in the light of the additional documents, then the plaintiffs will be non suited.

5.Per contra the learned counsel for the respondents contended that absolutely the additional grounds raised in this petition and the additional documents pleaded in C.M.P.(MD).No.11720 of 2024 are not mentioned in the written statement filed by the appellants before the trial Court. No plea was taken before this Court at the time of admission also. Apart from that he has also raising technical plea that the additional grounds and additional substantial questions of law can be raised only at the time of hearing and not by way of filing separate civil miscellaneous petition.

6.But, as mentioned above, the stage has reached for hearing the second appeal. Only at that time, this petition is filed. Additional grounds can be raised only with the permission of this Court. Permission can be made either orally or by a



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separate petition. So this is not bar for the appellants from filing this miscellaneous petition. Thus the primary objection raised by the respondents is negated.

7. Apart from that the respondents' counsel also submit that without any pleadings there can be no additional grounds of appeal and without pleadings and findings by the trial Court or the appellate Court as the case may be no additional substantial question of law can also be framed.

8. For which, the learned counsel for the appellants would submit that the plea of fraud can be taken up at any stage, since plea of fraud has been taken up with additional ground, which may also be permitted to be raised. Again for this the learned counsel for the respondents would submit that even before this Court no additional pleadings has been raised by the appellants in support of their additional grounds. He also referring to the Judgment of the Honourable Supreme Court made in the case of Krishnapasuba Vs. Dattatraya reported in AIR 1966 Supreme Court 1024 and also the Judgment made in the case of Hardayal Gir Vs. Sohna Ram reported in 1970 (3) Supreme Court Cases 635.

9. But at this stage, I am not expressing any opinion or regarding any finding as to whether the present suit is barred by the principle of Res Judicata and whether the plaintiffs must be non suited for suppression of material facts and for alleged fraud. I am keeping these two points open to be considered in future.



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10. Now coming to the additional grounds. As mentioned above, it is based upon the settlement deed alleged to have been executed by Mariamma and subsequent transaction effected by the plaintiffs. So the additional grounds can be received and permitted to be raised.

11. Accordingly, this petition stands allowed and the following additional substantial questions of law are framed.

1. Whether the lower appellate Court is legally correct in its omission to see that the suit property was never identified on the basis of Ex.A1 delivery list in favour of the respondents 1 to 6 in the present suit or in any earlier survey and settlement proceedings from 1937 the year of Ex.A1?
2. Whether the lower appellate Court has committed perverse appreciation of evidence by its omission to see that the commission report and plan (Ex.C1 & C2) filed in the present suit has no evidentiary value as proceeds on the basis of a commission report and plan in the earlier suit O.S.No.43 of 1978 and the earlier commission report was not marked as a documentary evidence in the suit and the earlier suit has ended in dismissal as per the appellate Court's judgment marked as Ex.A13 and the Commissioner was also not examined as a witness in the present suit?
3. Whether the respondents 1 to 6 have committed fraud on court in view of suppression of the 6 proposed additional documentary evidences, produced in the second appeal by the appellants?
4. When there is no liberty has been given in Ex.A13, in the appellate Court's Judgment in the earlier suit, by saving the law of limitation, if at all the same is



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permissible under law, and in view of the mandatory of provision of the Section 9 of the Limitation Act, whether the lower appellate Court is legally correct in its omission to see and conclude that present suit is hit by Order 2 Rule 2 CPC?

12. Apart from the above said substantial questions of law, the following substantial question of law is framed by this Court on its own.

1. Whether the additional substantial questions of law No.3 now framed will arise in the absence of specific pleadings by the appellants?

13. The parties are permitted to argue the matter on the above said additional substantial questions of law.

sd/-
02/04/2025

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/07/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1 THE SUBORDINATE JUDGE,
PADMANABHAPURAM.

2 THE PRINCIPAL DISTRICT MUNSIF,
PADMANABHAPURAM.



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ORDER
IN

C.M.P.(MD).No.7006 of 2024

in S.A.No.2186 of 2002

Date :02/04/2025

MK/10.07.2025 8P/4C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023