



A.S.(MD)No.165 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHIL KUMAR**

**A.S(MD).No.165 of 2023
and
C.M.P(MD)No.9024 of 2023**

R.Parvathi

... Appellant

-Vs-

1.M.N.M.M.Palaniappan

M.N.M.M.Ganesan(died)

2.N.Ramalakshmi alias Radha

3.A.R.Muthumani

4.G.Devasena

5.G.Meyyappan

6.G.Meyyammal @ Alamelu

7.M.Lakshmi

.. Respondents 1 to 7/
Plaintiffs 1 to 8

M.N.M.M.Meyyapan Chettiar (died)

8.M.N.M.M.Ramanathan

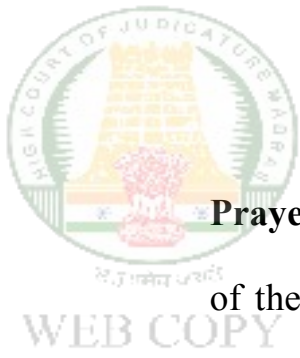
9.R.Vasanthamala

10.M.Meenakumari

11.V.Roja

12.K.Pushapavalli

.. Respondents 8 to 12 /
Defendants 2 to 6



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Prayer: Appeal suit filed under Order 41 Rule 1 & 2 read with Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree dated 09.01.2023 made in O.S.No.19 of 2010, on the file of the learned Additional District Judge, Sivagangai.

For Appellant : Mr.Ashok Kumar
for M/s.B.Muruganandam

For Respondents : Ms.V.Chandrasekar
for R1, R2 & R4, R9 & R10

: Mr.N.Tamilmani for R11

: No appearance for R12

J U D G M E N T

[Judgment of the Court was made by **RMT.TEEKAA RAMAN, J.**]

This appeal suit is filed against the judgment and decree passed in O.S.No.19 of 2010 dated 09.01.2023 whereby the suit filed for preliminary decree of partition for an extent of 1/7th share. The counter claim of the 5th defendant in respect of 1/7th share purchased from the 6th defendant is allowed.

2. The third party is the appellant herein. Mr.Ashok Kumar, learned counsel for the appellant submitted that the second defendant M.N.M.M.Ramanathan died on 16.07.2020 and hence on the date of



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judgment and decree, ie., on 09.01.2023, the legal heirs are not brought on record. Consequently, the decree was passed against the dead person is nullity.

3. The learned counsel for the appellant also contended that on coming to know about the pendency of the suit, the present appellant by name Parvathi, who is the legally wedded wife of the Ramanathan/ second defendant filed I.A.No.5 of 2022 under Order I Rule 10 of CPC to bring the legal heirs on record.

4. At this juncture, it remains to be stated that the suit was dismissed for default on 16.11.2015. One of the defendant by name Roja who is arrayed as 5th defendant as per the orders in I.A.No.10 of 2011 dated 04.08.2011 as a subsequent purchaser having purchased the property from one K.Pushpavalli. It remains to be stated that the original 6th defendant K.Pushpavalli was brought on record as legal heir of the deceased first respondent. The case of the 5th defendant Roja is that she has purchased 1/7th share in the suit property since the suit was dismissed for default on 16.11.2015. The counter claim filed by the 5th defendant was continued. Hence, there was an application for transposing the plaintiff as the respondent in the counter claim. In the counter claim for



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the reasons best known to her, the said Roja has not made the legal representatives of the said Ramanathan/the second defendant as a party.

So, the legal heir of the deceased second defendant, namely, Parvathi filed I.A.No.5 of 2022 under Order I Rule 10 of CPC to implead herself in the counter claim filed by the said Roja /5th defendant. After contest, the case was dismissed on 06.01.2023 and it appears that the learned Additional District Judge, Sivagangai has pronounced the judgment in the counter claim on 09.01.2023. Hence, C.R.P.No.2131 of 2023 filed before this Court and the same stands closed on 21.11.2024 observing that since the suit is already disposed of and appeal is filed and already sufficient opportunity was given to her.

5. On factual position, we are satisfied that on the date of judgment of the learned Additional District Judge, Sivagangai, the second defendant was dead and LRs are not on record and hence, this is the judgment passed against a dead person warranting interference. Accordingly, judgment and decree granted on 09.01.2023 is set aside. The matter is remitted back to the learned Additional District Judge, Sivagangai. Since the suit in O.S.No.19 of 2010 was already dismissed for default, the learned Additional District Judge is required to take up the counter claim alone after impleading and hearing the legal heir of the



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said Ramanathan and thereafter to decide the issue. For the said purpose we are invoking our powers under Order 41 Rule 1 of CPC to state that the present appellant being the legal heir of the said Ramanathan, is a proper party for adjudication and hence, she has to be impleaded as a party respondent in the counter claim filed by the Roja/5th defendant in the suit.

6. Accordingly, by virtue of the orders of this Court, the appellant Parvathi is hereby added as a party respondent in the counter claim filed by the said Roja/5th defendant in the suit and both the respondents are informed about the order of remand and the case is posted for hearing for the appearance of the party before the trial Court on 24.02.2025. Registry is directed to transmit the papers before the Trial Court on or before the said date.

7. With the above directions, this Appeal Suit is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

[T.K.R.,J.] [N.S., J.]
08.01.2025

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
PJJ



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Note to Registry:

1. Registry is directed to transmit the papers before the Trial Court on or before the said date.

2. The Registry shall call upon explanation from the Judicial Officer concerned (Additional District Judge, Sivagangai) as to how she passed an order against a dead person in O.S.No.19 of 2010 and how she herself decided to dismiss the case on that stage.



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RMT.TEEKAA RAMAN, J.
AND
N.SENTHIL KUMAR, J.

PJL

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