



A.S.(MD)No.189 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S.(MD)No.189 of 2016
and
C.M.P.(MD)No.11810 of 2016**

- 1.Subbammal
- 2.Narambulingam @ Durai
- 3.Balasubramaniam
- 4.Palani @ Dandayuthapani
- 5.Veerabagu @ Durai
- 6.Valli
- 7.Chitra
- 8.Mariammal
- 9.Ramalakshmi
- 10.Subramanian

... Appellants /
Defendants 1 to 9 & 11

Vs.

- 1.Kangai Ammal
- 2.Ravichandran
- 3.Muthukumar
- 4.Sekar

... Respondents /
Plaintiffs

***(Cause title accepted vide order of this Court dated 18.09.2014 in
M.P(MD)No.1 of 2014)***



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Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code against the judgment and decree passed in O.S.No.58 of 2006 dated 29.12.2009 on the file of I Additional District Judge, Tirunelveli.

For Appellants : Mr.M.Ponniah

For Respondents : Mr.M.P.Senthil

JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

Heard both sides.

2.This appeal arises out of a partition suit. It is not in dispute that the suit properties originally belonged to one Narambulinga Thevar. He had as many as 3 wives. It appears that the first wife and second wife of Narambulinga Thevar predeceased the third wife (Periyachi Ammal). Periyachi Ammal filed O.S.No.26 of 1953 before the Sub Court, Tirunelveli. In the said suit, the plaintiffs were Periyachi Ammal and her minor children. The first defendant was the son born through the first wife. The 2 sons born through the second wife was shown as Defendants 2 and 3. All the three defendants, who were minors when the suit was instituted were represented by their guardian (their maternal uncle). The case ended in compromise on 29.07.1953.

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3.By virtue of the said compromise decree, the present suit schedule properties were jointly allotted in favour of the Rama Moorthy and Arumuga Nainar.

4.Seeking partition of their share, the legal heirs of Rama Moorthy filed O.S.No.58 of 2006 against the legal heirs of Arumuga Nainar.

5.The Court below passed preliminary decree as sought for on 29.12.2009, Challenging the same, this first appeal came to be filed.

6.The learned counsel appearing for the appellants drew our attention to Clause 22 of the earlier compromise decree in which it is stated that if the parties desire separate possession, they can file execution petition. The contention of the learned counsel for the appellants is that the present suit is not maintainable and that the present plaintiffs ought to have filed only execution petition.



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7.We are not impressed with his argument. Admittedly, Rama Moorthy and Arumuga Nainar were given joint allotment. Legal heirs of Rama Moorthy now seek partition. Therefore, they are rightly instituted the present suit. The maintainability of the present suit cannot be determined in the light of some Clause in the earlier compromise decree. We do not find any error committed by the Court below. There is no merit in this appeal.

8.This Appeal Suit stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (M.J.R. J.)
03.03.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To:

1.I Additional District Judge,
Tirunelveli.

2.The Sub Court, Tirunelveli.



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G.R.SWAMINATHAN, J.

and

M.JOTHIRAMAN, J.

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