

SA(MD)No.135 to 137 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : **29.07.2025**

CORAM :

THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

S.A.(MD)No.135 to 137 of 2018

S.A.(MD)No.135 of 2018:-

1.T.M.Arasu Pillai (Died)

2.Vishnupritha

3.Minor Haripranav

Rep. by his mother and natural guardian,

Premelatha.

... Appellants

(A2 & A3 are brought on record as the legal heirs of the deceased sole appellant vide order dated 17.02.2020 in CMP(MD)Nos.1508, 1509 & 1496 of 2020.)

Vs

1.S.Parimanam

2.S.Rajendran

3.S.Janaki (Died)

4.A.Krishnasamy Pillai (Died)

5.J.Radha

6.Jayabuvaneswari

7.Saranya Devi (Minor)

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Rep. by mother and guardian, J.Radha.

8.Indra

9.Arumugam @ Raja

10.Banu

11.Punitha

12.Rajeswari

(R8 to R12 are brought on record as the legal heirs of the deceased fourth respondent vide order dated 21.12.21 made in CMP(MD)Nos.6810 to 6812 of 2018).

13.Vanaja

(R13 is brought on record as the legal heir of the deceased third respondent vide order dated 10.06.2025 made in CMP(MD)No.2366 of 2025.)

... Respondents

PRAYER: This Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree dated 08.03.2017 made in AS No.145 of 2009 on the file of the Principal District Judge, Tiruchirappalli, reversing the judgment and decree dated 30.09.2008 made in OS No.599 of 1997 on the file of the III Additional District Munsif, Tiruchirappalli.

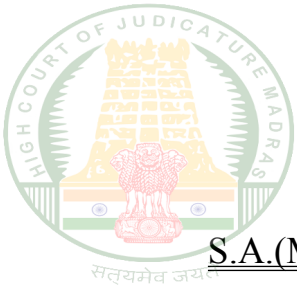
For Appellant : Mr.K.Prabhakar

For Respondents : Mr.V.Meenakshi Sundaram (R1&R2)

R3 – Died

Dismissed for default (R4 to R12)

R13 – Batta due.



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1.T.M.Arasu Pillai (Died)

2.Vishnupritha

3.Minor Haripranav

Rep. by his mother and natural guardian,

Premelatha.

... Appellants

(A2 & A3 are brought on record as the legal heirs of the deceased sole appellant vide order dated 17.02.2020 in CMP(MD)Nos.1460, 1465, 1463 of 2020.)

Vs

1.Janarthanan

2.G.Durairaj (Died)

3.Anbu Selvi

4.Saroja

(R4 is brought on record as the legal heir of the deceased second respondent vide order dated 25.02.2025 made in CMP(MD)Nos.2360, 2362, 2363 & 2365 of 2025).

... Respondents

PRAYER: This Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree dated 08.03.2017 made in AS No.184 of 2009 on the file of the Principal District Judge, Tiruchirappalli, reversing the judgment and decree dated 30.09.2008 made in OS No.410 of 2003 on the file of the III Additional District Munsif, Tiruchirappalli.



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For Appellant : Mr.K.Prabhakar

For Respondents : No appearance (R1)

R2 – Died

Mr.S.Ramakrishnan (R3 & R4)

S.A.(MD)No.137 of 2018:-

1.T.M.Arasu Pillai (Died)

2.Vishnupritha

3.Minor Haripranav

Rep. by his mother and natural guardian,

Premelatha.

... Appellants

(A2 & A3 are brought on record as the legal heirs of the deceased sole appellant vide order dated 17.02.2020 in CMP(MD)Nos.1434, 1454, 1456 of 2020.)

Vs

1.S.Parimanam

2.S.Rajendran

3.S.Janaki (Died)

4.G.Durairaj (Died)

5.Vanaja

6.Saroja

7.Anbuselvi

... Respondents



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(R5 is brought on record as the legal heir of the deceased third respondent and R6 & R7 are brought on record as the legal heir of the deceased fourth respondent vide order dated 25.02.2025 made in CMP(MD)Nos.2360, 2362, 2363 & 2365 of 2025.)

PRAYER: This Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree dated 08.03.2017 made in AS No.203 of 2009 on the file of the Principal District Judge, Tiruchirappalli, reversing the judgment and decree dated 30.09.2008 made in OS No.2549 of 1996 on the file of the III Additional District Munsif, Tiruchirappalli.

For Appellant : Mr.K.Prabhakar

For Respondents :Mr.V.Meenakshi Sundaram (R1,R2&R5)

Mr.S.Ramakrishnan (R6 & R7)

COMMON JUDGMENT

Since the parties in all the three appeals are same and also the issue involved in the suits are in respect of almost the same properties and a common judgment and decree has been passed in the first appeals, all the above three second appeals, with the consent of the learned counsels are heard together and disposed by this common judgment.

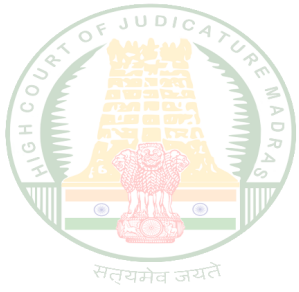


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2. The second appeal in SA(MD)No.135 of 2018 arises against the judgment and decree dated 08.03.2017 in AS No.145 of 2009 on the file of the Principal District Judge, Tiruchirappalli, reversing the judgment and decree dated 30.09.2008 in OS No.599 of 1997 on the file of the III Additional District Munsif, Tiruchirappalli. The suit for declaration and permanent injunction was dismissed, which was reversed in the appeal and thereby the suit came to be decreed and the defendants have preferred the second appeal in SA(MD)No.135 of 2018.

3. The second appeal in SA(MD)No.136 of 2018 arises against the judgment and decree dated 08.03.2017 in AS No.184 of 2009 on the file of the Principal District Judge, Tiruchirappalli, reversing the judgment and decree dated 30.09.2008 in OS No.410 of 2003 on the file of the III Additional District Munsif, Tiruchirappalli. The suit for mandatory injunction and permanent injunction came to be decreed, which was reversed in the appeal and the plaintiffs have preferred the second appeal in SA(MD)No.136 of 2018.

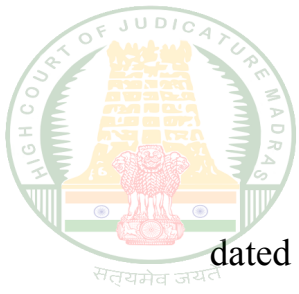


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4. The second appeal in SA(MD)No.137 of 2018 arises against the judgment and decree dated 08.03.2017 in AS No.203 of 2009 on the file of the Principal District Judge, Tiruchirappalli, reversing the judgment and decree dated 30.09.2008 in OS No.2549 of 1996 on the file of the III Additional District Munsif, Tiruchirappalli. The suit for mandatory injunction and permanent injunction came to be decreed, which was reversed in the appeal and the plaintiffs have preferred the second appeal in SA(MD)No.136 of 2018.

5. For the sake of convenience, the parties are referred to as per their ranking before the trial Court in OS No.599 of 1997, which is a comprehensive suit seeking for declaration.

6. It is the case of the plaintiffs that an undivided 1/3rd share of Ganapathia Pillai in A schedule suit property was brought to auction in a Court auction sale and the same was purchased by one Parvathiammal, who was the sister of Ganapathi Pillai on 09.12.1940. Further, one Perianna Nadar purchased 1/3rd share of Parimanam Pillai on 05.08.1937, which was subsequently sold to one Jagathambal through the document



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dated 09.12.1940. It is also the case of the plaintiffs that the said Parvathiammal had given a portion of the property purchased by her to Ganapathia Pillai's daughter, Mahalakshmi Ammal and gave another portion of the property purchased by her to Anjalai Ammal through two separate settlement deeds dated 18.01.1948 and 18.03.1948 respectively. Mahalakshmi Ammal entered into a deed of exchange with the plaintiffs' father, Sambasivam Pillai on 27.06.1977. The plaintiffs claim title to the property through exchange deed and also partition executed on 05.05.1960 between Sambasivam Pillai and Ramasamy Pillai.

7. It is the further case of the plaintiffs that, in the western side of the property, there is a small portion protruding 1½ feet which exclusively belongs to the plaintiffs. However, the first defendant had claimed right over the same and had filed a suit in OS No.2549 of 1996. Since the first defendant had filed a suit claiming right over this portion, the plaintiffs had come up with the suit in OS No.599 of 1997 seeking for declaration in respect of that portion which is in B schedule property and for a consequential permanent injunction.

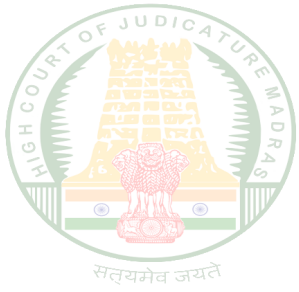


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8. The defendants resisted the said claim claiming exclusive right over B schedule property. According to the defendants, B schedule property forms part of their property in TS No.2338 and the plaintiffs cannot make a claim in respect of that portion of the property, for which the defendants are the absolute owners. The defendants contended that since the plaintiffs had encroached a portion, the defendants had filed a suit in OS No.2549 of 1996 seeking for mandatory injunction and permanent injunction. In the said suit, the defendants had also obtained an order of interim injunction as against the plaintiffs. Since the plaintiffs did not have any right over this portion, they have sought for dismissal of the suit.

9. As referred earlier, in respect of the same portion, which is B schedule property, the defendant had filed a separate suit in OS No.2549 of 1996 seeking for mandatory injunction and permanent injunction almost with the same sort of pleadings, which was also resisted by the plaintiffs.



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10. Yet another suit in OS No.410 of 2003 was filed by the plaintiff as against the property owner in TS 2341 in respect of the lane lying inbetween the properties of the plaintiff and the defendants therein. According to the plaintiff in OS No.410 of 2003, the plaintiff and his predecessors in title have been in enjoyment of A schedule property therein, including B schedule property in that suit, which is a lane lying inbetween the two properties of the plaintiff and the defendants therein for longer than a statutory period and they have acquired the absolute title for the lane in B schedule property.

11. It is the case of the plaintiff in OS No.410 of 2003 that the defendants have access to their property from the main road and since they have no right over the lane in B schedule property, they never had used the lane as access to their property. However, since the defendants therein attempted in making an access to B schedule lane and by their attempt, they had made an opening and by affixing door, had created entrance from the lane in B schedule, the plaintiff had come up with this suit in OS No.410 of 2003 seeking for mandatory injunction and permanent injunction. The defendants therein had resisted and disputed



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the claim of the plaintiff. It is also their contention that for the lane lying adjacent to their property, the defendants are having every right to use the lane in B schedule and the plaintiff cannot claim any exclusive right or title to the lane and sought for dismissal of the suit.

12. All the three suits were jointly tried. During trial, the trial Court had recorded the evidences in OS No.2549 of 1996, as the suit was in earlier point of time. During trial, Arasu Pillai, who is the plaintiff in OS No.2549 of 1996 examined himself as PW1 and marked exhibits Ex.A1 to Ex.A71. The first defendant therein examined herself as DW1 and one Durairaj as DW2 and marked Ex.B1 to B45. An Advocate Commissioner was appointed and his report along with the plan and the documents filed by him have been marked as Exs.C1 to C11. The trial Court, after analyzing the evidences by a common judgment and decree dated 30.09.2008, decreed the suit in OS No.2549 of 1996 and also OS No.410 of 2003, but dismissed the suit in OS No.599 of 1997. As against the same, three separate appeals in AS No.145, 184 and 203 of 2009 came to be filed.



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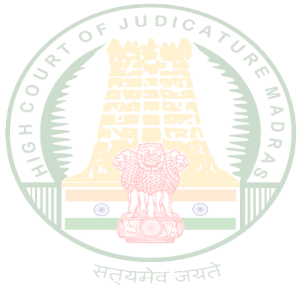
13. The lower appellate Court heard all the three appeals jointly and by a common judgment and decree dated 08.03.2017 allowed AS No. 145 of 2009, AS No.184 of 2009, AS No.203 of 2009 thereby dismissing the suit in OS No.410 of 2003 and OS No.2549 of 1996 and decreeing the suit in OS No.599 of 1997. In the appeals, nine interim applications came to be filed on either side under Order 41 Rule 27 of CPC seeking to file additional documents. The lower appellate Court had considered these interim applications along with the appeals and at the time of deciding the appeals, had allowed all these nine interim applications and had marked exhibits Ex.A72 to A77 and B46 to B113. Assailing the common judgment and decree of the lower appellate Court dated 08.03.2017, the plaintiff in OS No.2549 of 1996 has preferred the above three separate second appeals.

14. The second appeals have been admitted for the following substantial questions of law:-

In SA(MD)No.135 of 2018:-

“1. Whether the judgment and decree of the lower appellate Court reversing the judgment and decree of the trial Court in O.S.No.599 of 1997 is erroneous for want of

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sufficient reasons to dislodge the findings of the trial Court?

2. Whether the lower appellate Court has erred in decreeing O.S.No.599 of 1997, on the basis of the documents in Exs.B4 to B17, without a satisfactory explanation for the discrepancy between them and the earlier documents of title of the defendants Parmanam & others in Exs.A40, 41 and 42? ”

In SA(MD)No.136 of 2018:-

“1. Whether the judgment and decree of the lower appellate Court reversing the judgment and decree of the trial Court in O.S.No.410 of 2003 is erroneous for want of sufficient reasons to dislodge the findings of the trial Court?

2. Whether the decree of the lower appellate Court in O.S.No.410 of 2003 can be sustained in light of the Advocate Commissioner's report in Ex.C9, which clearly speaks of encroachment by the defendants Janarthanan and others has not been dislodged, particularly in light of the confirmation of the plaintiff Arasu Pillai's exclusive title to lane in T.S.No.2340 by the appellate Court? ”

In SA(MD)No.137 of 2018:-

“1. Whether the judgment and decree of the lower appellate Court reversing the judgment and decree of the trial Court in O.S.No.2549 of 1996 is erroneous for want of sufficient reasons to dislodge the findings of the trial Court?

2. Whether the decree of the lower appellate Court in



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O.S.No.2549 of 1996 can be sustained with respect to 2nd item of suit property in light of the lower appellate Court's own finding that the plaintiff Arasu Pillai is the exclusive owner of lane in T.S.No.2340?

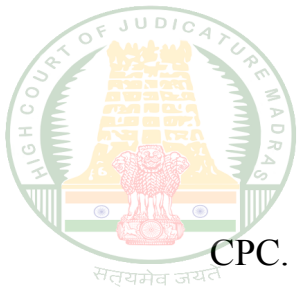
3. Whether the lower appellate Court has erred in not taking into consideration Ex-A44, partition deed executed among the defendants which recognised the title of the plaintiff to the property in T.S.No.2338?"

In all the three appeals, after hearing the learned counsel appearing on either side, the following common additional substantial question of law was framed:

“Whether the lower appellate court had followed the provision under Order XLI Rule 28 of C.P.C while receiving the additional documents filed under Order XLI Rule 27 of C.P.C?”

15. The learned counsel appearing for the appellants argued that, when the interim applications were filed seeking to adduce additional documents as evidence and when the lower appellate Court considered these applications along with the appeals, on coming to the conclusion that these applications ought to be allowed, the lower appellate Court ought to have followed mandatory provisions under Order 41 Rule 28 of

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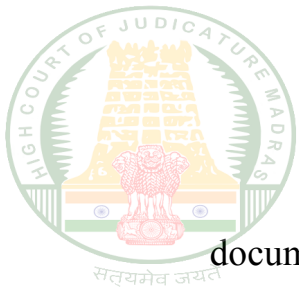


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CPC. But, however, without complying with the procedure, the documents were simply received and marked as exhibits, which is not in consonance with the provisions of Order 41 Rule 28 of CPC and therefore, the procedure adopted and the decision rendered by the lower appellate Court is perverse and sought for interference of this Court.

16. The learned counsel appearing for the appellants submitted that though there are very many submissions to be made in the merits of the appeals, but still since those mandatory requirements have not been complied with by the lower appellate Court, if this Court comes to the conclusion that there is an infirmity in the procedure adopted, then all other aspects in the appeals may not be required at this stage, as the appeals have to be remanded back to the lower appellate Court.

17. The learned counsel appearing for the respondents though have made certain submissions on merits, but however, conceded that the lower appellate Court, at the time of rendering the decision in the first appeals, had parallelly allowed all the nine interim applications and have marked nearly 70 documents in the appeals and while marking those

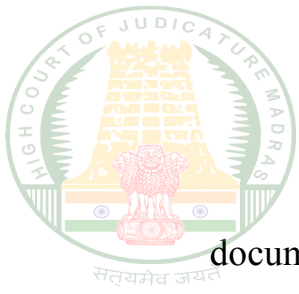


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documents, the procedure under Order 41 Rule 28 of CPC has not been adopted. The learned counsel appearing for the respondents further submitted that since there is a violation in marking those documents in the appeals without complying with the provisions of Order 41 Rule 28 of CPC, the judgment and decree of the lower appellate Court could be set aside and the matter could be remanded back to the lower appellate Court for the purpose of complying with the provisions of the Order 41 Rule 28 of CPC.

18. Heard the rival submissions made on either side and perused the materials available on record.

19. In view of the submissions made on either side, this Court does not propose to go into other merits in the above second appeals. The perusal of the common judgment and decree dated 08.03.2017 passed by the lower appellate Court reveals that in the first appeals, nine interim applications in IA No.249 of 2014, 235 of 2016, 166 of 2014, 167 of 2014, 176 of 2014, 229 of 2014, 421 of 2014, 168 of 2015, 252 of 2015 were filed under Order 41 Rule 27 of CPC seeking to file additional



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documents in the appeals. The parties are entitled to file additional documents even in the appeal, if the additional documents filed are in consonance and come within the four corners as contemplated under Order 41 Rule 27 of CPC.

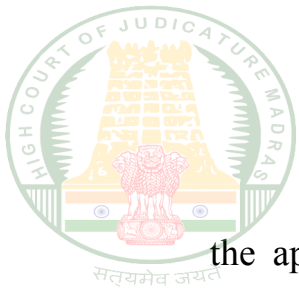
20. If the applications are filed in appeal for receiving additional documents, then the lower appellate Court considers these applications along with the appeals when the appeal is finally heard. During hearing of the appeals, if the lower appellate Court comes to the conclusion that the additional documents filed by the parties satisfy the provisions of Order 41 Rule 27 of CPC and the documents are required by the lower appellate Court to render a decision in the appeals, then the lower appellate Court could allow the applications for receiving additional documents. However, in the event of lower appellate Court coming to the conclusion that the documents filed for receiving additional documents does not come within the purview of Order 41 Rule 27 of CPC, then, those documents seeking to file additional documents could be dismissed and a decision could be rendered in the appeals.



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21. If the application seeking to file additional documents under Order 41 Rule 27 of CPC is allowed, as they satisfy the provisions of Order 41 Rule 27 of CPC, then, the lower appellate Court has to comply with the procedure contemplated under Order 41 Rule 28 of CPC. There are two options available before the appellate Court, either the appellate Court can take evidence by itself or send the matter to the trial Court or any other subordinate Court for the purpose of taking evidence and marking the documents and send it back to the lower appellate Court to render a decision.

22. In the instant case, the lower appellate Court had heard nine interim applications along with the appeals. On finding that the documents are to be received as additional evidence, the lower appellate Court had allowed all the interim applications on 08.03.2017. However, while allowing all the applications, the lower appellate Court, without resorting to comply with the mandatory procedure under Order 41 Rule 28 of CPC had directly marked those documents, which were allowed to be received as additional documents, as Exs.A72 to A77 and Exs.B46 to B113. The procedure adopted by the lower appellate Court in allowing



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the applications and directly receiving and marking the documents as exhibits and parallelly rendering decision in the appeals is not in consonance with and in compliance with the provisions as mandated under Order 41 Rule 28 of CPC.

23. In view of the above, the common additional substantial question of law is answered in favour of the appellants and the second appeals are allowed. The common judgment and decree of the lower appellate Court dated 08.03.2017 are set aside and the matter is remanded back to the lower appellate Court for marking the documents in the appeals by complying with the provisions of Order 41 Rule 28 of CPC. It is for the lower appellate Court to either take evidence or send it to the trial Court, as the lower appellate Court considers necessary in compliance with Order 41 Rule 28 of CPC. After the additional documents are marked by allowing the parties to lead evidence in that regard and also allowing rebuttal evidence if any, the lower appellate Court shall consider all the documents and materials and render a decision afresh in all the three appeals. In view of the remand, the parties shall appear before the lower appellate Court on **25.08.2025** and since



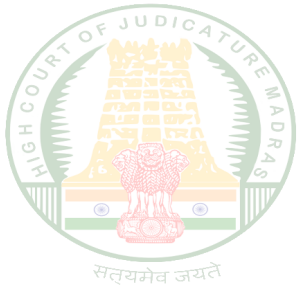
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the issues between the parties are pending for a long time, the lower appellate Court shall endeavour to expedite and dispose of the appeals as expeditiously as possible.

24. With the above observations, these three second appeals stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

29.07.2025

NCC :Yes/No
Index :Yes/No
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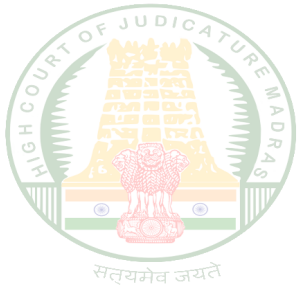


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TO:-

1. The Principal District Judge, Tiruchirappalli.
2. The III Additional District Munsif, Tiruchirappalli.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Common judgment made in
S.A.(MD)No.135 to 137 of 2018

Dated:
29.07.2025