



S.A.(MD).No.137 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.01.2025**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.137 of 2015

and

M.P.(MD)No.2 of 2015

1.S.Selvaraj

2.S.Samuel

... Appellants

/Vs./

1.T.Vasantha

2.T.Swamidasan

3.T.Isravel

4.T.Ponthangarathinam

5.T.Megala

6.R.Kovilpitchai Nadar

7.Y.Mosses (Died)

8.M.Jeyaraj

9.M.Azaiya

10.M.Salwin

11.M.Gnanraj

12.M.Yobhuraj

13.G.Glory

14.N.Jeyakumar

... Respondents

(Cause title amended, vide Court order, dated 10.06.2016, made in CMP(MD)No.2281 of 2016 in SA(MD)No.137 of 2015)

(Cause title accepted, vide Court order, dated 07.11.2016, made in MP(MD)No.3 of 2015 in SA(MD)No.137 of 2015)



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 05.09.2012, made in A.S.No.35 of 2009 on the file of the Principal Sub Court, Tirunelveli, confirming the Judgment and Decree, dated 18.02.2009, made in O.S.No.508 of 2004 on the file of the II Additional District Munsif Court, Tirunelveli.

For Appellants : Mr.Ananth C.Rajesh
For R1, R2, R4 and R5: Mr.V.Kannan
For R3 : No appearance
For R6 : No appearance
R7 : Died
For R8 to R14 : No appearance

JUDGMENT

The present appeal is preferred by the plaintiffs in the suit against the judgment and decree dated 05.09.2012, passed in A.S.No.35 of 2009 on the file of the Principal Sub Court, Tirunelveli, confirming the judgment and decree, dated 18.02.2009, passed in O.S.No.508 of 2004 on the file of the II Additional District Munsif Court, Tirunelveli.



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2. The plaintiffs in the suit are the appellants herein and the defendants in the suit are the respondents herein. For the sake of convenience, the parties are referred as plaintiffs and defendants as per the ranking in the suit.

3. The suit is filed for partition. The Trial Court has considered the plea and has dismissed the suit on the ground of non-joinder of necessary parties and for not including all the properties for partition.

4. In the appeal suit, the plaintiff has rectified the mistake of not impleading the necessary parties, whereby all the parties were impleaded in the appellate stage. However, again the plea of not including the other properties was considered by the Appellate Court and the appeal was dismissed. Aggrieved over the same, the present second appeal is preferred by the plaintiffs.

5. The contention of the plaintiffs is that at the appellate stage all the necessary parties were impleaded, therefore the appeal ought to have been heard on merits. But the contention of the respondents is that still all the parties are not



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impleaded.

6. The next contention of the plaintiffs is that the properties available for partition as far as to his knowledge are mentioned in the suit. But the respondents 6 and 7 submitted that still some of the properties are not included. However, the Learned Counsel appearing for respondents 1, 2, 4 and 5 vehemently opposed the said plea stating that the other properties are their personal properties acquired by the 1st respondent's husband. This Court is of the considered opinion that the said contention ought to be considered and tested before the Trial Court.

7. Therefore, this Court is of the considered opinion that the suit cannot be dismissed since the parties are entitled to partition, hence the proper remedy would be to remit the case back to the Trial Court with a direction to implead the necessary parties and to include all the properties and consider the partition as per law.

8. Both the plaintiffs and the defendants are at liberty to implead all the



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necessary parties to the suit. As well as the plaintiffs and the defendants are at liberty to include all the properties available for partition. If some of the properties are self-acquired, then the party raising the said plea ought to prove the same by raising the plea with proof. The parties are at liberty to raise additional pleadings and to produce documents / evidence to substantiate their claims. All the defences are open to all the parties.

9. The judgment and decree passed by both the Courts are set aside and the case is remitted back to the Trial Court. The suit shall be completed by the Trial Court within a period of one year from the date of receipt of a copy of this judgment. All the parties are restrained from alienating the properties until the disposal of the suit. If the parties are in possession of the property, the possession shall not be disturbed until the disposal of the suit. The original documents filed in M.P.(MD)No.2 of 2015 shall be returned to the appellants.



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10. With the above said observations, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. Principal Sub Court, Tirunelveli.
2. II Additional District Munsif Court,
Tirunelveli.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.137 of 2015

Dated:
07.01.2025