



S.A.(MD).No.184 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.184 of 2018

and

C.M.P.(MD)Nos.4833 of 2018 and 715 of 2025

Kannan

... Appellant

/Vs./

- 1.Rajangam
- 2.Susila
- 3.Prohitham
- 4.G.Sammantham
- 5.G.Ramadoss
- 6.Latha
- 7.G.Madhavan
- 8.Ravi
- 9.Bama
- 10.Muralidoss
- 11.Rajam
- 12.Vadivelu
- 13.Chandran
- 14.Sriram

Manivasakan (Died after suit)

- 15.Ganajothi
- 16.Saran
- 17.Naresh
- 18.Minor Guna

...Respondents



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(Minor R14 is declared as major and Chandran / 13th respondent is removed from his guardianship and minors R16 and R17 are declared as major and Ganajothi / R15 is removed from guardianship as per common order of this Court, dated 22.01.2025, made in CMP(MD)Nos.766 to 771 of 2025 in SA(MD)No.184 of 2018)

(18th respondent is represented by his Mother and Guardian Ganajothi)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree, dated 20.11.2017, made in A.S.No.14 of 2017 on the file of the Additional District Court (Fast Track), Kumbakonam, confirming the Judgment and Decree, dated 14.06.2016, made in O.S.No.178 of 2010 on the file of the Additional Sub Court, Kumakonam.

For Appellant : Mr.H.Lakshmi Shankar
For R1 to 13, 15 and 18 : Mr.V.K.Vijaya Raghavan

JUDGMENT

The present second appeal is preferred by the 1st defendant against the judgment and decree, dated 20.11.2017 passed in A.S.No.14 of 2017 on the file of the Additional District Court (Fast Track), Kumbakonam, confirming the judgment and decree, dated 14.06.2016 passed in O.S.No.178 of 2010 on the file of the Additional Sub Court, Kumakonam.



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2. The plaintiffs in the suit are the respondents 1 and 2 herein, the 1st defendant in the suit is the appellant herein and the other defendants 3 to 8 are the respondents 3 to 18 herein. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit.

3. The suit is filed for partition among the parties. In the suit schedule property only one item is shown admeasuring 1900 square feet (approximately). The property belongs to one Thambusami Pillai who is having three sons namely, Palaniyapillai, Govindharaja Pillai and Narayanan. Palaniyapillai is having Rajangam, Susila and Kannan as legal heirs, Govindharaja Pillai is having seven legal heirs and Narayanan is having five legal heirs. One Manivasakan, son of Narayanan died and his legal heirs are impleaded as respondents 16 to 18 herein.

4. The contention of the plaintiffs is that the suit property belongs to Palaniyapillai, Govindharaja Pillai and Narayanan. Therefore, the suit property ought to be divided as 1/3rd share to each branch. This contention is heavily contested by the 1st defendant / appellant. The 1st defendant submitted that he is



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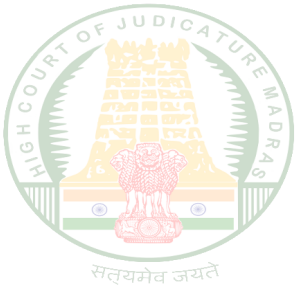
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residing in the said property. Moreover, there are several other properties belonging to the family of Thambusami Pillai for which he relied on the legal notice issued by the plaintiffs which is marked as Ex.A4 and the reply notice was issued by the 1st defendant marked as Ex.A5.

5. It is seen from the records that Exhibits A4 and A5 are marked. However, there are other notices between the parties which are marked as Exhibits B4 and B5. The said Exhibits B4 and B5 are not referred in the judgment. But it was marked by consent and the same was not referred or shown in the judgment.

6. The learned Counsel appearing for the 1st defendant / appellant submitted that the certified copies of the said notices are before this Court. On perusal of the notices, it is seen that there are several other properties which are available for partition.

7. The contention of the plaintiffs and the defendants 3 to 8 are that some of the properties are sold by the parties. Also admitted that some of the properties are



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available and the same is stated in the reply notices. The appellant herein has filed C.M.P.(MD)No.766 of 2025 listing all the documents available for partition.

8. After hearing the rival submissions, this Court is of the considered opinion that when there are other properties available for partition, then the same ought to be divided among the parties. Hence, the case ought to be remitted back for reconsideration.

9. Further this Court is of the considered opinion that instead of allowing this civil miscellaneous petition to receive the additional documents, if permission is granted to the 1st defendant / appellant to file the same before the Trial Court the same would suffice to meet the ends of justice. Therefore, the 1st defendant / appellant is permitted to file petition to accept the documents same before the Trial Court. The Registry is directed to return the original documents filed in C.M.P.(MD)No.715 of 2025 to the appellant herein and the appellant is permitted to file the same before the Trial Court.



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10. The learned Counsel appearing for the respondents 1 to 13, 15 and 18 submitted that the final decree proceeding is pending. Therefore, the list of documents shall be filed in the final decree proceedings and the said list of properties shall be included while partitioning the properties.

11. Therefore, the case is remitted back to the Trial Court. The parties are at liberty to raise all the contentions which are available as per law. The parties are at liberty to file additional pleadings, adduce oral and documentary evidences.

12. The Trial Court is directed to complete the suit within a period of one year from the date of receipt of a copy of this judgment.

13. With the above said observations, the second appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

30.01.2025

Tmg



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TO:

1. I Additional District Court (Fast Track),
Kumbakonam.
2. Additional Sub Court, Kumakonam.
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.184 of 2018

Dated:
30.01.2025