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S.A.NO.634 OF 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2026

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.634 OF 2004

1.Jamuna

2.Kalaiselvi

Both are residing at

8-B, Devendrapuram II Street,

Salem – 1.

... Appellants / Appellants /
Plaintiffs

Vs.

Krishnaveni

No.8, Devendrapuram II Street,

Salem – 1.

... Respondent / Respondent /
Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated October 23, 2002 made in A.S.No.167 of 1999 on the file of the 1st Additional District Court - cum - Chief Judicial Magistrate, Salem, confirming the Judgment and Decree dated December 10, 1988, made in O.S.No.722 of 1988, on the file of the Additional Sub Court, Salem.

For Appellants : Mr.G.J.Adithya
for Mr.K.Selvaraj

For Respondent : No appearance

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ORDER

Mr.G.J.Adithya, representing Mr.K.Selvaraj, Counsel on record for the appellant is before this Court.

2.Representing Counsel for the appellant submits that he has no instruction from the appellants. Further, he could not contact the Trial Court's Counsel who instructed to file this Second Appeal and notice sent to the sole respondent has been returned with an endorsement 'no such person'. Representing Counsel prays to order notice by way of substituted service.

3.The request of the representing Counsel for the appellant is rejected for the reasons set out hereunder:

3.1.The appellants, namely, Jamuna and Kalaiselvi are the plaintiffs 3 and 4 in the Original Suit in O.S.No.722 of 1988 and the respondent Krishnaveni is the defendant. The plaintiffs filed a Suit in O.S.No.722 of 1988 on the file of the Additional Sub Court, Salem, seeking partition and other reliefs.

3.2.The case of the plaintiffs is that one Gopal and the defendant are brother and sister. Gopal is the father of the plaintiffs and he passed away leaving behind the plaintiffs as his legal heirs / legal representatives. The Suit

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Property was purchased by Gopal and the defendant Krishnaveni jointly vide Sale Deed dated November 9, 1951 from one Manickammal. Accordingly, the plaintiffs filed a Suit for partition seeking $\frac{1}{2}$ share each.

3.3.The defendant Krishnaveni entered appearance before the Trial Court and filed written statement stating that the Suit Property absolutely belonged to her. Based on the same, the Trial Court dismissed the Suit vide Judgment and Decree dated December 10, 1998.

3.4.Feeing aggrieved, the plaintiffs 3 and 4 filed an Appeal Suit in A.S.No.167 of 1999 before the First Appellate Court. In the Appeal Suit also, the defendant entered appearance and contested the Appeal Suit. The First Appellate Court after hearing both sides, dismissed the Appeal Suit and confirmed the Judgment and Decree passed by the Trial Court vide Judgment and Decree dated October 23, 2002.

3.5.Feeing aggrieved by the concurrent findings rendered by the Trial Court as well as the First Appellate Court, the appellants / plaintiffs 3 and 4 filed this Second Appeal.

3.6.This Second Appeal was admitted on October 29, 2004 on the following substantial questions of law:



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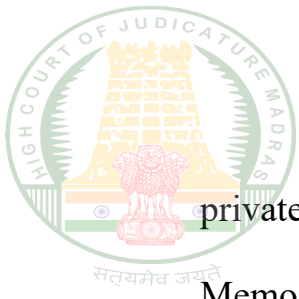
‘1. Whether the Courts below erred in not accepting the original letter of the respondent dated 10.12.1958 (marked as Ex.A3) even though it is more than 30 years old and against the provisions of Section 90 of the Indian Evidence Act, 1872?

2. Whether the Courts below erred in holding that the contents of Exs.A-3 and A-7 are not proved even though the respondent has categorically admitted her signature in it and against the provisions of Sections 18 and 58 of Indian Evidence Act?’

3.7. In these circumstances, despite sufficient opportunities given, the appellants did not take proper steps to serve notice to the sole respondent. Considering the facts and circumstances of the case and considering the relationship between the appellants and the defendants, this Court is of the view that this is a fit case to order fresh notice to the sole respondent.

4. Accordingly, issue fresh notice to the sole respondent through Court and Post with correct address returnable by 10.06.2026. In addition,

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private notice with RPAD is permitted. The appellants shall file proper Batta

Memo within **TEN (10)** working days from today, failing which, the Second

Appeal shall stand dismissed automatically, without any further reference to

this Court.

5.List the matter on 10.06.2026.

10.04.2026

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
TK

To

1.The 1st Additional District Court
cum - Chief Judicial Magistrate
Salem.

2.The Additional Sub Court
Salem.



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R.SAKTHIVEL, J.

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