

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1036 of 2015 and
M.P.No.1 of 2015

1.Vasanthha ... 1st Appellant/4th Appellant/
6th Defendant.
2.Annamalai ... 2nd Appellant/2nd Respondent/
3rd Defendant.
Vs.
1.Ramamoorthy ... 1st Respondent/1st Respondent/
Plaintiff.
2.Venkataraman ... 2nd Respondent/3rd Respondent/
5th Defendant.
3.Poomalai
4.Govindammal ... Respondents 3&4/Respondents 4&5/
3rd Plaintiff
5.Kolandaiammal
6.Dharmaraj ... Respondents 5&6/Appellants 2&3/
Defendants 2&4

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 17.11.2014 in A.S.No.116/2012 on the file of the learned Principal Subordinate Judge, Salem confirming the judgment and decree dated 12.08.2011 in I.A.No.243 of 2011 in O.S.No.6 of 1998 on the file of the learned II Additional District Munsif, Salem.

For Appellant सत्यमेव जयते : Mr.K.Ramanraj

JUDGEMENT

The first respondent herein filed O.S.No.6/1998 on the file of the learned District Munsif, Salem for partition. The appellants herein are the defendants 6 and 3 respectively. The other respondents are the other defendants in the suit. In the said suit, the trial Court passed a preliminary decree for partition thereby allotting 1/5th share to the plaintiff. As against the same, an appeal was filed by the defendants in A.S.No.90/2000 on the file of the learned II Additional District Judge, Salem. By decree and judgment dated 06.09.2001, the learned II Additional District Judge, dismissed the said appeal. Thereafter, the plaintiff filed an Interlocutory Application in I.A.No.243/2011 for passing of final decree. That was opposed by the defendants by raising many grounds. The trial Court appointed an Advocate Commissioner. The Commissioner submitted his report dividing the properties. As against the same, the

appellants herein do not file any objection at all. Thereafter, the trial Court, passed final decree and as against the same, the defendants 1, 2, 4 & 6 filed an appeal in A.S.No.116/2012 on the file of the learned Principal Subordinate Judge, Salem. That was dismissed by decree and judgment dated 17.11.2014. Challenging the same, the appellants are before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellants and I have also perused the records carefully.

3.The learned counsel for the appellants would submit that the First Appellate Court did not afford sufficient opportunity to the appellants herein to file objection to the Advocate Commissioner's report. He would further submit that the trial Court as well as the Appellate Court have not taken into account the value of the properties while passing the final decree going by the nature of the soil i.e., good soil and bad soil.

4.In my considered view, these are all pure questions of fact which cannot be gone into in this second appeal. Thus, I do not find any question of law much less a substantial question of law even to admit this second appeal.

5.It is seen from the records that the appellants did not raise these two pleas even before the Courts below. Therefore, it is not open for the appellants to raise these two pleas, for the first time, in this second appeal. At any rate, I do not find any substantial question of law in this second appeal.

6.In the result, the second appeal fails and accordingly the same is dismissed and the decree and judgment of the First Appellate Court confirming the decree and judgment of the trial Court is confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Principal Subordinate Judge,
Salem.

2.The II Additional District Munsif,
Salem.

+1 cc to M/s.R.Ramanraj, Advocate, sr.63347