

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06 - 04 - 2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 177 of 2015

and

M.P. No. 1 of 2015

Vasanthammal (died)

Sriramulu (died)

1. Siva

2. Kumaravel

3. Manjula

4. Ammani

5. Valli

6. Sangeetha

... Appellants

Vs.

1. Munusami Pillai

Saradha (died)

2. Selvi

3. Raja @ Chandrasekar

4. Gnanasekar

Gunasekar (died)

5. Jaya @ Punitha

6. Manivannan

... Respondents

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 27.06.2014 passed by the Subordinate Judge, Thiruvallur, in A.S. No. 27 of 1999 confirming the judgment and decree passed by the District Munsif, Thiruvallur, in O.S. No. 556 of 1987 on 20.04.1999.

For Appellants

: Mr. S. Sadasharam

WEB COPY

JUDGMENT

The plaintiffs who were non-suited by the concurrent findings of the Courts below as regards their prayer for declaration of title and also for permanent injunction, challenge the findings of the Courts below by way of the present Second Appeal.

2. The suit was brought by the plaintiff one Samandhi, who was the wife of one Munusamy and mother of the second plaintiff, for declaration of title and for permanent injunction restraining the second defendant from handing over possession of the suit items and documents of title to the first defendant. After the death of the first plaintiff Samandhi, her daughter, viz., the second plaintiff, continued to prosecute the suit and when the case was pending at the appellate stage, she also died and hence, her Legal Representatives have been prosecuting the suit and the appeal.

3. According to the plaintiff, the suit properties, which originally belonged to her deceased husband and the first defendant, who is her brother-in-law, were mortgaged with the second defendant Munusamy Pillai. The suit filed by the unsuccessful plaintiff before the Courts below was based on the allegation that there was a partition among the brothers on 13.12.1960 by way of a Koorchit in and by which the southern half was allotted to her husband Munusamy while the northern half fell to the share of the first defendant. Further claiming that the defendants were colluding together and prevented the plaintiffs from claiming any share in the property, the plaintiff has filed the suit for declaration of half share on the southern side and for permanent injunction restraining the second defendant from putting the property in possession of the first defendant.

4. Before the trial Court, the first defendant filed a written statement contending that the plaintiff was not the legally wedded wife of his brother Munusamy and the second plaintiff was not a daughter born to them. He also denied the partition between the brothers and sought for dismissal of the suit.

5. Before the trial Court, at the first instance, P.Ws. 1 to 3 were examined besides marking Ex. A.1 to A.6. On the side of the defendants, one Ambujammal was examined as D.W.1 and mortgage deed dated 04.9.1974 was marked as Ex. B.1.

6. The trial Court, on consideration of the evidence adduced by the parties and the submissions made by the learned counsels, by judgment dated 20.04.1999, having found that the plaintiff has not established right and title over the suit property, dismissed the suit for declaration of title and for permanent injunction. Aggrieved by the same, the plaintiff preferred appeal in A.S. No. 27 of 1999 before the First Appellate Court / Subordinate Judge, Thiruvallur, and the same was also dismissed. Questioning the same, the plaintiffs filed Second Appeal before this Court in S.A. No. 186 of 2002.

7. From the materials available on record, it is seen that earlier, this Court while hearing the Second Appeal in S.A. No. 186 of 2002, had remanded the case to the First Appellate Court with a

direction to decide the question of legal heirship of the plaintiffs to the deceased Munusamy. Pursuant to the said direction of this Court, additional evidences were permitted to be let in by the First Appellate Court and documents Exs. A.7 to A.13 were marked and it is seen that after elaborate consideration, the plaintiffs were declared to be the legal heirs of the deceased Munusamy, viz., the first plaintiff as the wife of the deceased and the second plaintiff being the daughter born to them. However, on the question of title, the appeal was dismissed confirming the judgment and decree passed by the trial Court. Aggrieved by the concurrent finding of the Courts below, the legal representatives of the plaintiffs are before this Court.

8. Contending that both the Courts below failed to mark the Koorchit, the learned counsel appearing for the appellants / plaintiffs sought for the interference of this Court.

9. Heard the learned counsel appearing for the appellants and perused the records.

10. A mere perusal of the records would show that the very claim is based on the Koorchit under which the plaintiffs claim half share of the suit properties. But the same has not been marked. The appellants who seek for the prayer of declaration of title on a specific plea that they got the property by way of partition evidenced by the Koorchit, will have to establish that they got title as per the Koorchit. Therefore, in the considered opinion of this Court, because of the non-production of the Koorchit, the right and title of the parties cannot be decided. Furthermore, the plaintiffs also have not let in any other evidence other than the Koorchit to prove the factum of partition. In the absence of any other document or evidence to substantiate the claim of title to the suit properties, the appeal has to fail.

11. In my opinion, the courts below have clearly recorded a finding on the claim of title to the suit properties. This being a Second Appeal filed under Sec.100, C.P.C., against the concurrent judgments, no substantial question of law would arise for consideration. There are no error of jurisdiction or law or perversity on the face of the records. Hence, a re-appraisal of the evidence to arrive at a different conclusion than the one concurrently arrived at by the Courts below, is not warranted. This Court is also not expected to embark upon such re-appraisal of evidence in the Second Appeal. I do not find any reason to differ from the concurrent finding rendered by the courts below.

For the foregoing reasons, the judgments and decrees of the Courts below are confirmed and the Second Appeal is dismissed. However, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

gri

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

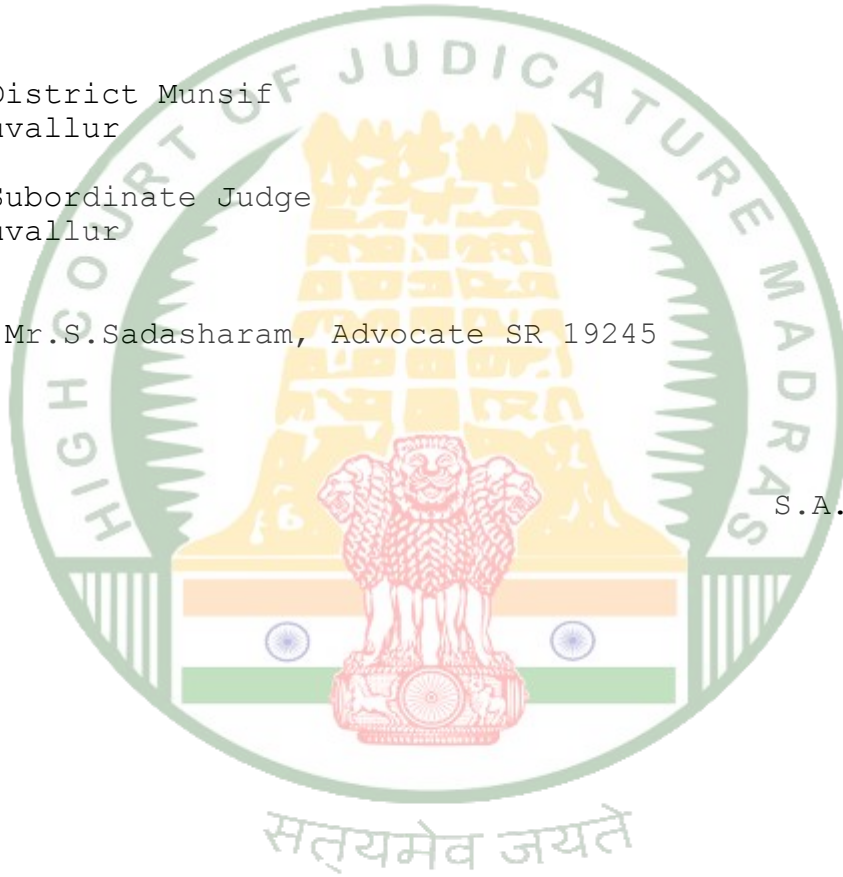
To

1. The District Munsif
Thiruvallur
2. The Subordinate Judge
Thiruvallur

+ 1 cc to Mr.S.Sadasharam, Advocate SR 19245

km(co)
prk1/6

S.A. No. 177 of 2015



WEB COPY