

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.06.2015

Coram:

THE HONOURABLE MS. JUSTICE R.MALA

Second Appeal No.454 of 2015

and

M.P.No.1 of 2015

Sinnappan

...Appellant/3rd Respondent/3rd defendant

/vs/

- 1.Madeleine Marie Chretien
- 2.Joseph John Paul Chretien
- 3.Chretien George Antoine
- 4.Chretien Gerard Peter
- 5.Chretien James Rajan ..Respondents 1 to 5/Appellants/Plaintiffs
- 6.Amirthammal
- 7.Dimone Arokianathan
- 8.Selamarie
- 9.Clara @ Bakiyavady
- ..Respondents 6 to 9/Respondents 1, 2, 4 & 5/defendants1,2,4&5

The Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 16.02.2015 passed in A.S.No.23 of 2013 on the file of Principal District Judge, Pondicherry reversing the judgment and decree dated 23.04.2013 passed in O.S.No.215 of 2005 on the file of Principal Subordinate Judge, Puducherry.

For Appellant : Mr.T.S.Baskaran

JUDGMENT

The second appeal filed against the judgment and decree dated 16.02.2015 passed in A.S.No.23 of 2013 on the file of Principal District Judge, Pondicherry reversing the judgment and decree dated 23.04.2013 passed in O.S.No.215 of 2005 on the file of Principal Subordinate Judge, Puducherry.

2.The learned counsel appearing for the appellant would submit that the respondents 1 to 5 are the legal heirs of the deceased Kullapottu @ Amalore Marie and the appellant is the son of Kullapottu @ Amalore Marie. The respondents 1 to 5 as plaintiffs filed a suit for declaring purported Will dated 24.01.1994 allegedly executed by Kullapottu @ Amalore Marie, which is void ab initio and

non-est in eye of law and in any event not binding on plaintiffs in any manner for any purpose and also sought for passing a preliminary decree for an equitable partition and separate possession of plaint schedule property and the same was dismissed. Against which, the plaintiffs/respondents 1 to 5 herein have preferred the first appeal in A.S.No.23 of 2013. The first appellate Court set aside the judgment and decree passed by the trial Court. Against which, the third defendant/the appellant herein preferred this second appeal.

3.At the time of admission, argument of the learned counsel for the appellant is heard in length.

4.On perusing the record, it reveals that originally the property is belonged to the mother of the appellant and the same has been assigned in the name of his mother/ Kullapottu @ Amalore Marie by the Government. The appellant put forth his case that his mother executed the Will dated 24.01.1994 in his favour. After her death, as a legatee he is in possession and enjoyment of the suit schedule property. The appellant has stated that he was in continuous possession and enjoyment of the suit property, but to prove the same, he has not filed any documentary evidence. He fairly conceded that assignment has been given to his mother. Furthermore, the property has been assessed in his name and the property assessment will not confer any title. In such circumstances, the first appellate Court has rightly held that appellant's mother is the absolute owner of the property and she executed the Will dated 24.01.1994. But, to prove the Will dated 24.01.1994, the attester of the Will or the scribe of the Will have not been examined. So, the first Appellate Court has correctly held that the respondents herein, who are the legal heirs of Kullapattu @ Amalore Marie are entitled to a preliminary decree of partition for declaring that the Will dated 24.01.1994 executed by Kullapottu @ Amalore Marie is null and void and non-est in the eye of law and also not binding upon the appellant. In such circumstances, no substantial question of law will arise in the second appeal. Therefore, the second appeal deserves to be dismissed and it is hereby dismissed.

5.In the result, the second appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

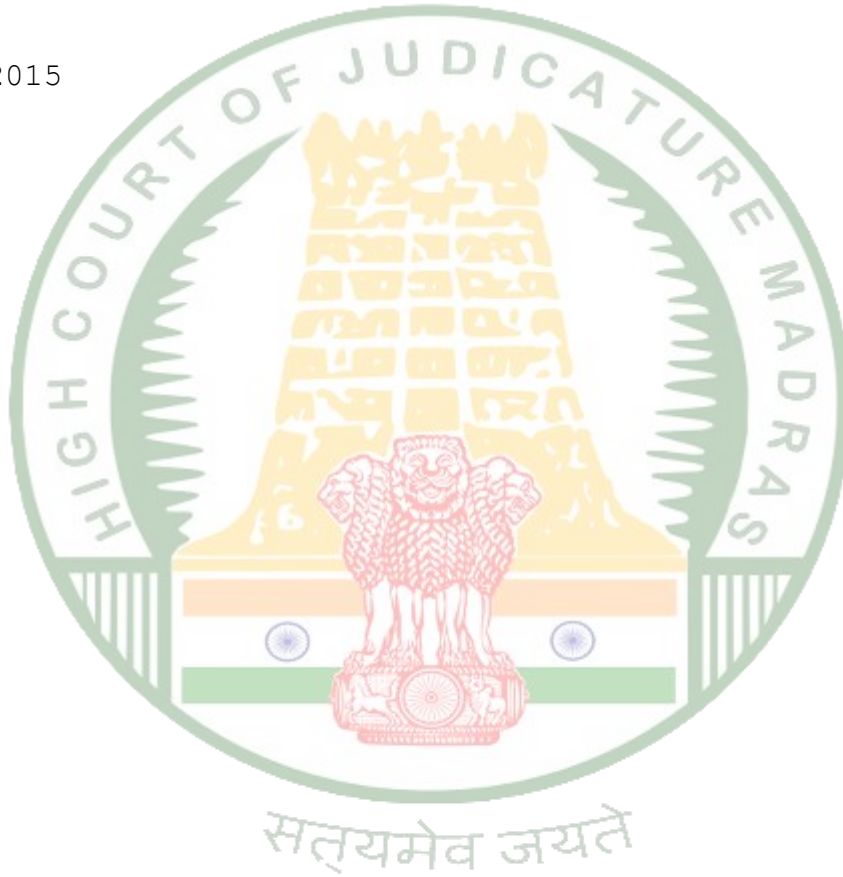
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To
1.The Principal Subordinate Judge,
Puducherry.
2.The Principal District Judge,
Pondicherry.
3.The Record Keeper,
V.R. Section,
High Court, Madras.

1 cc to Mr.T.S.Baskaran , Advocate Sr.No.30514

S.A.No.454 of 2015

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