

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.656 of 2015

1. Muniyan

2. Muniyammal

... Plaintiffs/Appellants

Vs.

1. Kannaiyan

2. Subramani

... Defendants/Respondents

Prayer:- This Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 21.03.2014 made in A.S.No.15 of 2012 on the file of the Subordinate Judge, Gingee, confirming the judgment and decree dated 07.12.2011 made in O.S.No.125 of 2008 on the file of the Principal District Munsif, Gingee.

For Appellants : Mr.C.Munusamy

J U D G M E N T

Aggrieved by the unanimous decisions of the Courts below in a suit for partition, the plaintiffs have preferred the instant Second Appeal.

2. The suit properties originally belonged to one Sevidan. He had four sons, namely, Munusamy, Parasuraman, Ettiyan and Govindaraj. The first defendant is son of Munusamy and the second defendant is son of Parasuraman. The first plaintiff is the son of Ettiyan and the second plaintiff is the daughter of Govindaraj.

3. According to the plaintiffs, the properties originally belonged to Sevidan, who is grandfather of both the plaintiffs and defendants. After the demise of the said Sevidan, the plaintiffs were enjoying the properties and now the plaintiffs claimed that they also have share in the suit properties. Hence, they filed a suit for partition.

4. However, the suit was assailed by the defendants contending that the first defendant has got an assignment from the Government for the suit land and he is in possession on the basis of the

assignment. As there was an interference by the plaintiffs, the defendants have already filed a suit in O.S.No.439 of 2007.

5. The only question that has to be decided is as to whether the plaintiffs have got any right in the suit properties and whether they are entitled to a share in the suit property.

6. The plaintiffs, who claimed that the suit property is the joint family property, have produced the copy of the plaint in O.S.No.439 of 2007 as Ex.A1 and pattas standing in the name of the first defendant as Exs.A2 and A3 and lawyer's notice dated 20.11.2007 as Ex.A4, besides examining P.W1 to P.W6. However, the plaintiffs have not established as to how the suit property is a joint family property and what is the right of the plaintiffs in the same.

7. The Courts below have concurrently held that the assignment in Exs.B1 and B2 are specifically given in the name of the first defendant. Excepting the first defendant nobody else have the right over the suit property. The defendants had also filed Exs.B3 to B7, which are the electricity receipts to show that they have been in possession of the properties.

8. It is also found by the lower appellate Court that the first defendant has been cultivating in the suit land, which was not objected by the plaintiffs so far. It is specifically denied that the possession of the defendants is not for and on behalf of the plaintiffs. There was also no joint patta in the suit property as alleged by the plaintiffs in the name of the plaintiffs' father with the defendants' father.

9. The learned counsel for the appellants relied on Ex.A4, the legal notice, in which, he denied the right of the defendants. However, the lower appellate Court discredited the said document Ex.A4 as the property description has not been clearly given with the boundary description and there are no other documents for evidence to show that the properties were joint family properties, purchased by their father for the benefit of the family or the same having been inherited from their ancestors. In the absence of clear and categorical evidence with respect to nature of the properties and also the ownership of the properties, the suit is dismissed by the Courts below. In the above facts, there is no question of law arises for consideration to be considered in the above Second Appeal.

10. In the result, the Second Appeal is dismissed, thereby confirming the judgments and decrees of the Courts below. However, in the facts and circumstances of the case, there shall be no order as to costs.

srn

s/d-

Assistant Registrar(CS-II)

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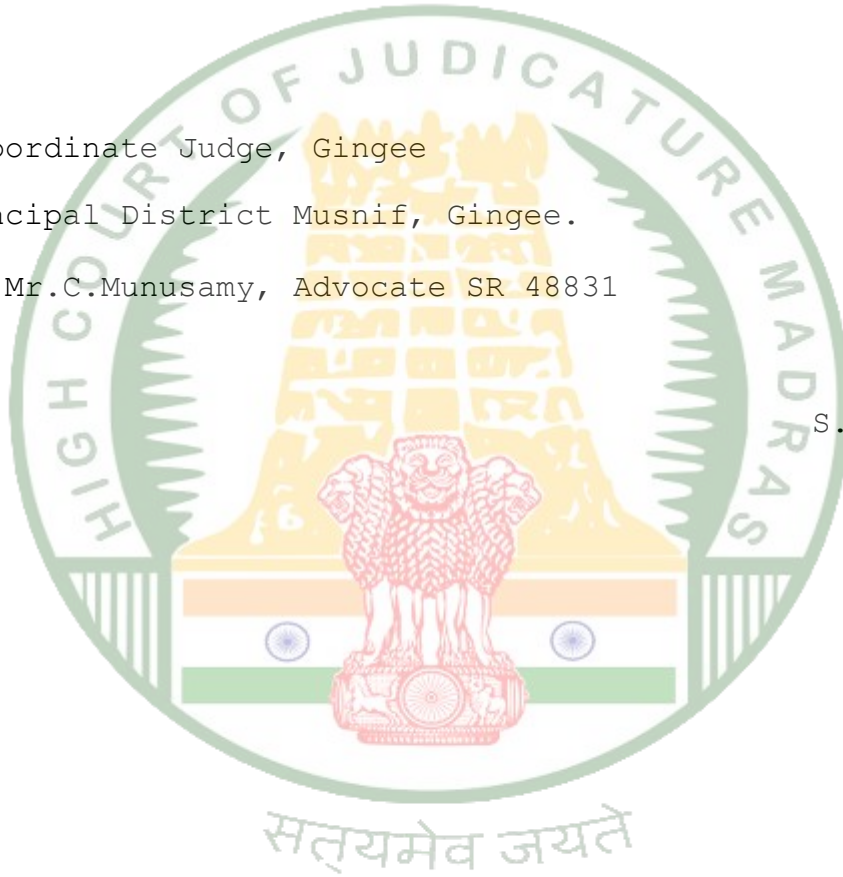
1.The Subordinate Judge, Gingee

2.The Principal District Musnif, Gingee.

+ 1 cc to Mr.C.Munusamy, Advocate SR 48831

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