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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.87 of 2015 and
M.P.No.1 of 2015

Aroquiame Louis Marie Joseph (Died)

1.Aroquiame Irudayamary
2.Aroquiame Sagaya Andoniraj
3.Aroquiame Cojandenadin
4.Aroquiame Daniel
5.Aroquiame Amalor Julien
(Rep. by power Agent of Appellant 1 to 4)

... Appellants/Respondents/
Defendant-2

Vs.

1.Rozario
2.Alphonse

..Respondents 1&2/Respodent 1&2/
Pliantiff 1&2

Colettee Marie Reime (died)

3.Marie Josephine Pappammalle

..3&4 Respondents/3&4 Respondents/
3&4 Defendant

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 24.07.2014 passed by the learned Principal District Judge, Puducherry in A.S.No.32 of 2011 confirming the fair and decreetal order dated 26.02.2004 passed by the learned Principal Subordinate Judge, Pondicherry in I.A.No.2202 of 2000 in O.S.No.614 of 1985.

For Appellants: Mr.R.Muralidharan

JUDGEMENT

The respondents 1 and 2 herein have filed a suit in O.S.No.614 of 1985 on the file of the learned Principal District Judge, Puducherry for partition and for separate possession of the 1/6th share each in the suit properties. There were three defendants in the suit by name, Louis Marie Antoine, Aroquime Louis Marie Joseph and Colette Marie Raaine. The trial Court by decree and judgement dated 05.09.1988 decreed the suit thereby granting the preliminary decree for partition to allot 1/4th share in "A" schedule property.

2.As against the same, an appeal was filed by the plaintiffs before this Court in A.S.No.64 of 1989, since, according to them, they were not granted for decree to sufficient extent of the property, towards their share. The said appeal was disposed of by



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this Court by decree and judgement dated 03.03.1999 thereby modifying the decree in terms of the compromise reached between the parties. Accordingly, it needs to be mentioned that, during the pendency of the said appeal, the first defendant, Ms.Louis Marie Antoine passed away and in her place, the fourth defendant, Ms.Marie Josephine Pappammalle was impleaded as her legal representative. In the modified decree granted by this Court, Mr.Rozario was granted 1/24th share; Ms.Alphonse was granted 3/24th share; Mr.Aroquiam Louis Marie Joseph was allotted 8/24th share and Ms.Marie Josephine Pappammalle was allotted 8/24th share. That modified preliminary decree passed by this Court has become final.

3. Thereafter, the plaintiffs filed an Interlocutory Application in I.A.No.2202 of 2000 before the learned Principal Subordinate Judge, Puducherry for passing of final decree. An Advocate Commissioner was appointed and who submitted his report on 25.02.2002, dividing the property in terms of the preliminary decree passed by this Court. Though, a formal objection was raised by some of the defendants, when the matter was heard by the First Appellate Court, as it could be seen in the judgement of the trial Court, all the parties have agreed for allotting their shares in terms of the Advocate Commissioner's report. Accordingly, a final decree was passed by the learned Principal Subordinate Judge, Puducherry, by decree and judgement dated 26.02.2004. As against the same, the appellants herein filed an appeal in A.S.No.32 of 2011 before the learned Principal District Judge, Puducherry. By decree and judgement dated 24.07.2014, the First Appellate Court dismissed the appeal thereby confirming the final decree passed by the trial Court. As against the same, the appellants are before this Court with this second appeal.

4. 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.

5. A perusal of the records would go to show that for the Advocate Commissioner's report dividing the suit property in terms of the preliminary decree passed by this Court, the parties expressed no objection before the trial Court and based on the same only, the final decree was passed allotting their respective shares as per the division made by the Advocate Commissioner. Thus, it is a decree passed on consent. Having considered the same, the First Appellate Court also confirmed the decree and judgement passed by the trial Court.

6. The learned counsel for the appellants is not in a position to raise any substantial question of law warranting admission.

7. In my considered opinion, since, the final decree passed is based on consent of the parties, the appellants herein have got no right to raise any plea before this Court in this second appeal. For this reason, I find no case for the appellants even for admission.



8. In the result, the second appeal fails and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Principal District Judge,
Puducherry.

2. The Principal Subordinate Judge,
Puducherry.

+ 1 cc to Mr. R. Muralidharan, Advocate SR.12518

RSY(CO)
EU 24.04.2015

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