

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.961 of 2015

1.M.Jayamani

2.M.Mohana

... Appellants/Plaintiff

vs.

1.S.Subramaniam

2.V.Chandramani

3.Kavitha

4.Ravikumar

... Respondents/Defendants

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree in A.S.No.65 of 2014 dated 30.01.2015 on the file of the learned III Additional District Judge, Salem confirming the decree and judgment dated 12.06.2014 in O.S.No.350 of 2013 on the file of the learned I Additional Subordinate Judge, Salem.

For Appellants : Mr.S.Sathiyanarayanan

JUDGMENT

The plaintiffs in O.S.No.350 of 2013 on the file of the learned I Additional Subordinate Judge, Salem are the appellants and the defendants in the said suit are the respondents herein. The said suit was filed for partition and for separate possession of 1/6th share for each plaintiffs. The trial Court by decree and judgment dated 12.06.2014 dismissed the suit. As against the same, the appellants have filed an appeal in A.S.No.65 of 2014 before the learned III Additional District Judge, Salem. By decree and judgment dated 30.01.2015, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. 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 case of the plaintiffs in brief is as follows:-

The suit property was allotted to the first defendant in a family partition between him and his brothers, by means of partition deed dated 18.06.1980. The first defendant is the father of the plaintiffs and the defendants 2 to 4. According to the plaintiffs, they are entitled for 1/6th share each in the suit property, as the suit property is the ancestral property of the first defendant, plaintiffs and the other defendants.

4.The case of the first defendant is that the suit property is a self acquired property. He has further stated that the plaintiffs were given huge money at the time of their marriage even before coming into force of the Hindu Succession Amendment Act 1989. Hence, according to the first defendant, the plaintiffs are not entitled for any share in the suit property.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, the second plaintiff was examined as P.W.1 and as many as 10 documents were exhibited. On the side of the defendants the first defendant was examined as D.W.1 and as many as 23 documents were exhibited.

6.Having considered all the above, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how the appellants are before this Court with this second appeal.

7.In this second appeal, the learned counsel for the appellants would submit that since, the property was inherited by the first defendant in the family partition, the same should be treated as a joint family property. He would further submit that being daughters, the appellants are entitled for share in the suit property.

8.A perusal of the judgments of the Courts below would go to show that since, the suit property was allotted to the first defendant in a family partition, between him and his brothers, the same should be treated as only a separate property. Even in the case of joint family property, since, the plaintiffs were married prior into coming into force of Hindu Succession Act (Amendment Act 1 of 1990), they are not entitled for any share in the suit property. It is on these two legal grounds, the trial Court dismissed the suit which was confirmed by the First Appellate Court. I do not find any infirmity in the said finding of the Courts below. Further, there is no question of law much less a substantial question of law at all involved in this second appeal warranting admission.

9.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 hereby confirmed. There shall be no order as to cost.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

jbm

To

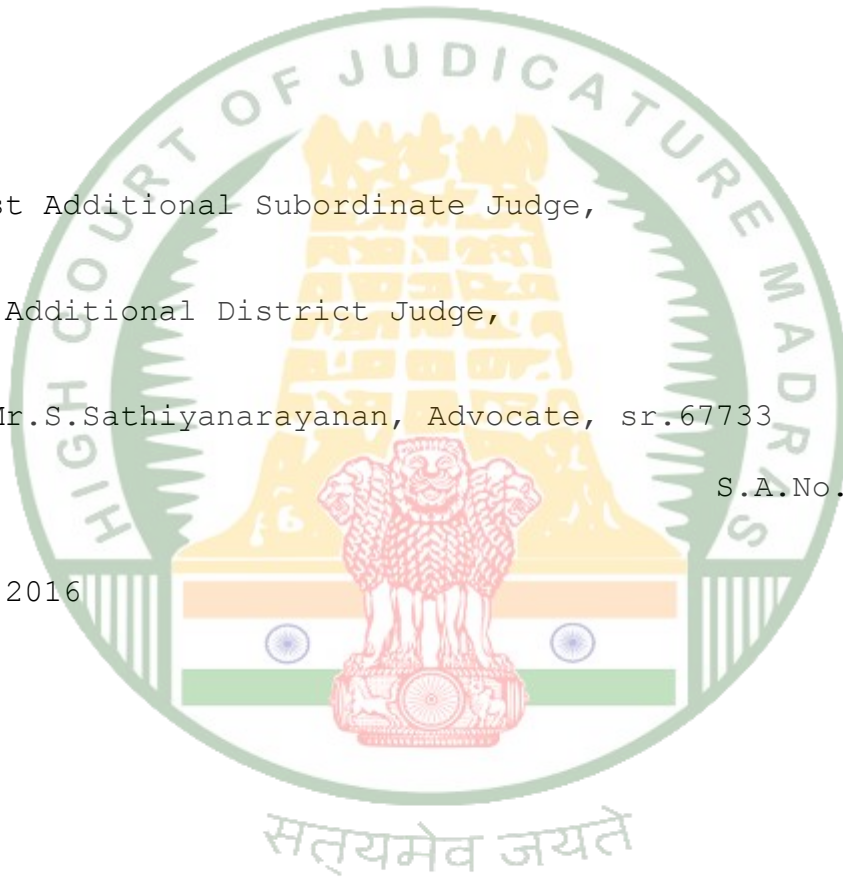
1.The First Additional Subordinate Judge,
Salem.

2.The III Additional District Judge,
Salem.

+1 cc to Mr.S.Sathiyarayanan, Advocate, sr.67733

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