

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.966 of 2015

1. Muthu @ Anbu
2. Sankar
3. Saravanan

.. Appellants

-Vs-

Poongavanammal (died)

1. Manickam
2. Periyamayaki
3. Manokaran
4. Mathiyalagan
5. Tamilarasi
6. Elavarasi
7. Arivazhagan
8. Saroja
9. Vijayalakshmi
- 10.Minor A.Koteeswaran
- 11.Minor A.Sangeetha

... Respondents

(Minors 10 & 11 respondents represented by their next friend/mother 9th respondent Vijayalakshmi)

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 18.02.2015 made in A.S.No.13 of 2014 on the file of the Principal District Judge, Dharmapuri in confirming the judgment and decree dated 27.03.2014 made in O.S.No.115 of 2008 on the file of the Subordinate Judge, Dharmapuri.

For Appellants : Mr.C.Prabhakaran

J U D G M E N T

The plaintiffs in O.S.No.115 of 2008 on the file of the learned Subordinate Judge, Dharmapuri are the appellants herein. The respondents are the defendants in the suit. The said suit was filed for partition and for allotment of 36/180 shares for

the plaintiffs. By decree and judgment dated 27.03.2014, the trial court dismissed the suit. As against the same, the appellants herein filed an appeal in A.S.No.13 of 2014 before the learned Principal District Judge, Dharmapuri. By decree and judgment dated 18.02.2015, the lower 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 before me 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 is as follows:

The suit properties were originally owned by one Kaveri Gounder. Kaveri Gounder died prior to the year 1975 leaving behind his wife Poongavanammal (1st defendant), their two sons by name Manickam and Manokaran (2nd and 4th defendants). The defendants 6 to 8 are the children of Manickam. Yet another son of Manokaran, namely, Asaithambi died. The defendants 10 to 12 are his legal heirs. According to the plaintiffs, they are entitled for a share in the suit properties in the ratio mentioned in the suit.

4. The defendants contested the suit stating that there was partition of the joint family properties in which the suit properties were allotted to the sons of Kaveri Gounder and for Periyannayagi some movable properties were given.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs, as many as 3 witnesses were examined and no document whatsoever was marked. On the side of the defendants, as many as two witnesses were examined and 4 documents were marked. Having considered all the above, the trial court dismissed the suit which was confirmed by the lower appellate court. That is how, the appellants are before this Court with this Second Appeal.

6. In this Second Appeal, the learned Counsel for the appellants would submit that the courts below were not right in dismissing the suit without appreciating the fact that the suit property was originally owned by Kaveri Gounder and that the same was not at all partitioned among the children of Kaveri Gounder after his demise. Therefore, according to the plaintiffs, they are entitled for the share as claimed in the plaint.

7. In my considered view, this is essentially a question

of fact. Assuming that Periyamayaki had a semblance of right over the suit properties, since Periyamayaki is alive, the plaintiffs cannot claim any partition. At any rate, since the findings are on facts, there is no substantial question of law involved in this Second Appeal warranting admission.

8. In the result, the Second Appeal fails and the same is accordingly dismissed and the decree and judgment of the lower appellate court is confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District Judge, Dharmapuri.
- 2.The Subordinate Judge, Dharmapuri.

+1 cc to M/s.C.Prabakaran, Advocate, sr.64128

S.A.No.966 OF 2015

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