

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.969 of 2015 and M.P.No.1 of 2015

K.P.Poonkodi

.. Appellant/1st Defendant

-Vs-

1.K.P.Chithra

2.K.P.Sangeetha

3.R.Murali

..Respondents 1 to 3/
Defendants 2,3,5

4.K.P.Kuberan

..4th Respondent/Plaintiff

5.K.P.Punithavalli

..5th Respondent/4th
Defendant

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 30.01.2015 made in A.S.No.58 of 2012 on the file of the Additional District Judge, Krishnagiri in modifying the judgment and decree dated 13.12.2010 made in O.S.No.370 of 2004 on the file of the District Munsif, Krishnagiri.

For Appellant

: Mr.C.Prabakaran

J U D G M E N T

The 1st defendant in O.S.No.370 of 2004 on the file of the learned District Munsif, Krishnagiri is the appellant herein. The 1st respondent is the plaintiff in the suit and the other respondents are the other defendants in the suit. The said suit was filed by the plaintiff for partition and for allotment of his 1/5th share in the suit property and for mesne profits. By decree and judgment dated 13.12.2010, the trial court passed a preliminary decree allotting 1/5th share in the suit property to the plaintiff, but, negatived the plea for mesne profits. As against the same, the defendants filed A.S.No.58 of 2012 before the learned Additional District Judge, Krishnagiri. Challenging the denial of mesne profits, the plaintiff filed A.S.No.59 of 2012. By a common judgment dated 30.01.2015, the lower appellate court confirmed the decree of the trial court granting

preliminary decree for partition and reversed the same in respect of denial of mesne profits and directed the defendants to pay Rs.60/- p.m. from the month of December, 2003 towards mesne profits. Challenging the same, the appellant has come up with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. The case of the plaintiff is as follows:

The plaintiff is the brother of the defendants 1 to 4. Their mother was one Mrs.Rajeswari. The suit property and other properties were left behind by the father of the plaintiff K.P.Periyannan. He died intestate on 04.12.1988. After his demise, on 09.11.1998, a partition was effected between the plaintiff, defendants and their mother. In the said partition, an undivided 1/5th share in the suit property herein was allotted to the share of their mother Mrs.Rajeswari. Rajeswari was thus entitled for rent to the tune of 1/5th share in the total rent from these properties. Rajeswari died on 18.02.2002. Thereafter, the plaintiff demanded for partition of the suit property which was left behind by his mother. The plaintiff contended that he is entitled for 1/5th share in the suit property besides mesne profits. The defendants contested the suit. According to the defendants, on the demise of their mother, the entire property would go to the defendants only as the daughters and the plaintiff has got no right to have any share in the same.

4. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiff, he was examined as P.W.1 and as many as 6 documents were exhibited. On the side of the defendants, the 1st defendant was examined as D.W.1 and no document was marked on their side. Having considered all the above, the trial court decreed the suit in part which was modified by the lower appellate court. That is how the appellant/1st defendant is before this Court with this Second Appeal.

5. The learned Counsel for the appellant would submit that in this Second Appeal, there are substantial questions of law involved. According to him, the following are the substantial questions of law:

a. Whether the findings of the lower appellate court is correct in reversing well considered finding of the trial court in holding that the plaintiff is entitled for mesne profit which was not proved that the 5th defendant is paying rent with the other defendants?

b. Whether the finding of the Courts below are correct in holding that the plaintiff was also entitled for share of 1/25th share in Door No.231 and 1/5th share in Door No.18/229E despite that the oral partition dated 09.11.1998 the plaintiff has got major share than the defendants 1 to 4 and sold those properties?

c. Whether the lower appellate court is correct in holding that the plaintiff is entitled for share over the mother's property who was given maintenance in lieu of oral partition and the property was absolutely allotted to daughters of defendants 1 to 4 and more particularly the defendant alone take care of the mother Rajeswari? and

d. Whether the plaintiff has proved his bounden duty that the 5th defendant is paying rent with the other defendants and thereby the plaintiff is entitled for mesne profit?

6. In my considered view, these questions are all only on facts and there is no question of law much less a substantial question of law requiring this Second Appeal to be admitted. Though it is contended by the defendants that on the demise of their mother Rajeswari, the suit property should go only to the hands of the defendants, I do not find any justification behind the same in law. The courts below have clearly held that on the demise of the mother, the plaintiff, being the son and the defendants being the daughters are entitled for equal share as per Hindu Succession Act. I do not find any infirmity in the said conclusion arrived at by the courts below. So far as the mesne profits ordered by the lower appellate court is concerned, the lower appellate court has correctly held that from the month of December, 2003 the suit property has been enjoyed by R.Murali as a tenant. He has been paying the rent only to the 1st defendant. Correctly, the lower appellate court has calculated the share of the plaintiff at Rs.60/- p.m. towards rent. This is also a question of fact.

7. But the learned Counsel for the appellant would submit that there is no evidence that the rent was paid to the appellant herein by the tenant. This does not persuade me because the lower appellate court has concluded based on the evidence let in in the suit that the rent is paid by Murali only to the appellant/1st defendant. This being a question of fact, since there is no perversity in the said findings, I am not inclined to interfere with the decree and judgment of the lower appellate court. At any rate, as I have already stated, there is no substantial question of law at all involved in this Second Appeal warranting admission of the same. Therefore, this Second Appeal deserves only to be dismissed.

8. In the result, the Second Appeal fails and the same is accordingly dismissed and the decree and judgment of the lower appellate court granting decree for mesne profit is hereby

confirmed. No costs. Consequently, connected Miscellaneous
Petition is also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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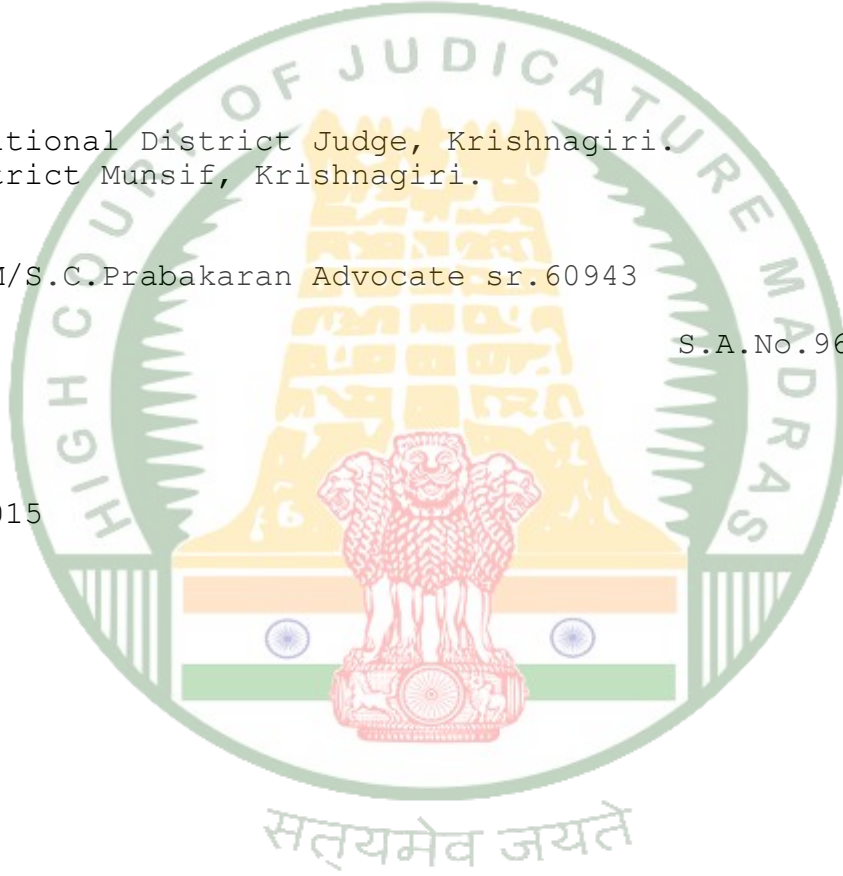
To

- 1.The Additional District Judge, Krishnagiri.
- 2.The District Munsif, Krishnagiri.

+1 cc to M/S.C.Prabakaran Advocate sr.60943

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