

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 04.10.2016
CORAM:
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
Second Appeal No. 802 of 2016
and
C.M.P.No.15157 of 2016

B.Palanisamy ... Appellant/Appellant/Plaintiff
Vs.

B.Kandasamy ... Respondent/Respondent/Defendant

Second Appeal has been filed against the Judgment and Decree dated 25.09.2015 made in A.S.No.2 of 2015 on the file of IV Additional District Court, Erode District at Bhavani modifying the Judgment and decree dated 12.09.2013 made in O.S.No.81 of 2010 on the file of the Sub Court, Bhavani.

For Appellant : Mr.T.Murugamanickam

J U D G M E N T

The appellant is the plaintiff in a suit for partition seeking half share in the suit property. The respondent is the defendant and the parties are brothers.

2. The case of the plaintiff is as follows:

The suit property belonged to his father who died on 02.05.2006 leaving the plaintiff, defendant, their mother by name Lakshmi and four daughters as his heirs. It is the further case of the plaintiff that on the death of the father, the plaintiff and other heirs succeeded to the suit property in equal moieties and thus, they entitled to 1/7th share as co-parceners cum co-owners. The mother and four sisters executed release deed on 29.04.2009 in respect of their 5/7th share in favour of the defendant which will not bind the plaintiff as the release by such persons in favour of the defendant is not valid. Therefore, the plaintiff is entitled to 1/2 share whereas the defendant is entitled to the remaining half.

3. The suit was contested by the defendant by claiming that he is entitled to 6/7th share in the suit property, pursuant to the release deed executed by his mother and sisters under document No.1285/2010 dated 29.04.2009.

4. The trial Court, on considering the respective pleadings of the parties and the evidence let in by them, found that the claim of the plaintiff seeking half share in the suit property is not maintainable pursuant to the release deed executed by the mother and sisters in favour of the defendant. Therefore, the trial Court dismissed the suit however in entirety. The aggrieved plaintiff filed an appeal before the lower Appellate Court. After hearing both parties, the lower appellate Court, while agreeing with the findings rendered by the trial Court in respect of the claim made by the plaintiff seeking half share in the suit property, has however, not confirmed the finding of the trial Court in its entirety, as it found that the plaintiff is otherwise entitled to 1/7th share, even as admitted by the defendant. Therefore, the appeal was partly allowed by passing a preliminary decree for partition of 1/7th share. Challenging the decisions of the Courts below, the plaintiff has filed the present Second Appeal.

5. Heard Mr.T.Murugamanickam, learned counsel for the appellant and perused the materials placed before this Court.

6. It is not in dispute that the suit property originally belonged to the father of the plaintiff and the defendant and that he left the plaintiff and defendant as well as their mother and four sisters as his legal heirs. It is not in dispute that each of the legal heir is entitled to 1/7th share in the suit property. It is also not in dispute that the mother and sisters have released their respective share in favour of the defendant by executing the release deed dated 29.04.2009 registered as document No.1285/2010. It is also seen that the plaintiff has simply filed a suit for partition without questioning the release even assuming he has any right to question the same. First of all, the plaintiff who seeks for partition has to implead the necessary parties as party defendants in the said suit. Except the defendant, the mother and sisters were not made as parties to the suit. Therefore, on the ground of non-joinder of necessary parties, the suit is liable to be dismissed. It is also seen that the plaintiff has simply filed a suit for partition without questioning the release deed, even assuming that he has any right to question the same. However, as it is admitted by the plaintiff himself that each party is entitled to 1/7th share as the legal heirs of the deceased father, he is not entitled to question such release. The appellate Court, on considering such admitted position, granted the decree for partition of 1/7th share to the plaintiff. Such finding rendered by the lower appellate Court is perfectly in accordance with law and do not require any interference by this Court as I find no substantial question of law arises in this appeal for consideration.

7. Considering all these aspects, the Second Appeal fails and the same is dismissed. No costs. Consequently connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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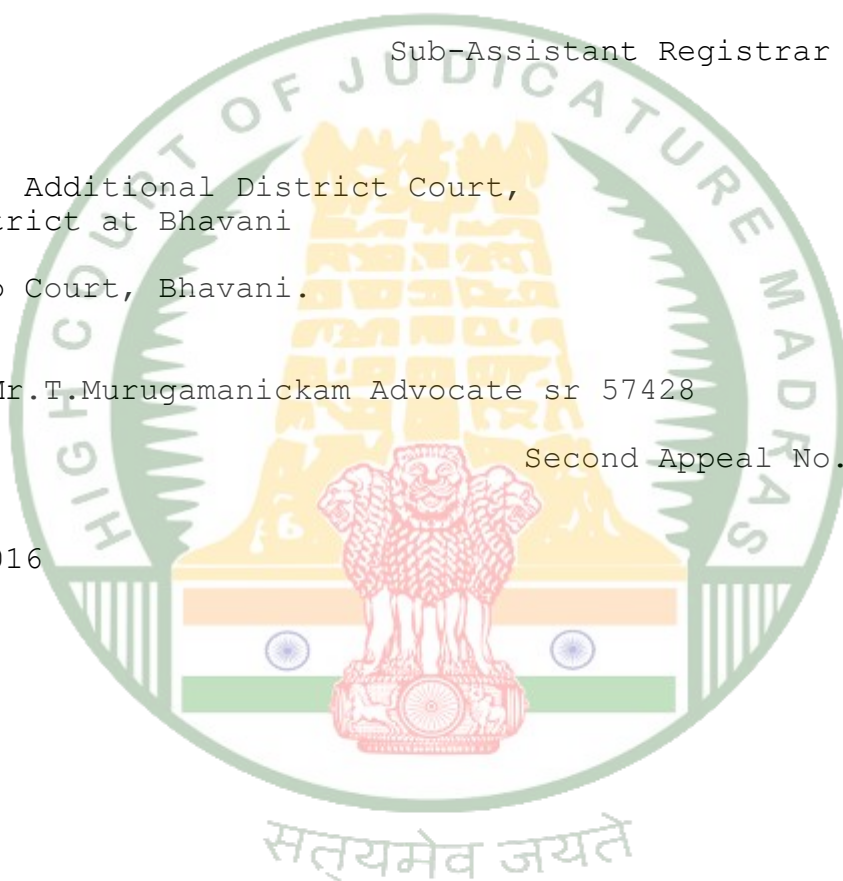
1. The IV Additional District Court,
Erode District at Bhavani

2. The Sub Court, Bhavani.

+1 cc to Mr.T.Murugamanickam Advocate sr 57428

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