



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2016

WEB COPY

Coram:

THE HONOURABLE MS.JUSTICE R.MALA

S.A(MD)No.498 of 2016

Radha Lakshmi

.. Appellant/Appellant/5th Defendant

vs.

1.Harikrishnan

2.Ramamoorthy

.. Respondents 1 & 2/

Respondents 1 & 2/Plaintiffs

3.A.R.Ravikumar

4.S.Murugadas

5.R.Ramasubramanian

6.A.R.Rajendran

.. Respondents 3 to 5/

Respondents 3 to 5/Defendants 1 to 4

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgement and Decree made in A.S.No.6 of 2009, dated 30.08.2010 on the file of the Principal District Court, Virudhunagar District at Srivilliputhur, confirming the Judgment and Decree made in O.S.No.18 of 2007 dated 13.08.2008 on the file of the Sub Court, Aruppukottai.

For Appellant

: Mr.S.Parthasarathy

For RR 1, 3 to 6

: No appearance

For R - 2

: Mr.V.Perumal

JUDGMENT

The fifth defendant as an appellant, who lost the legal battle in both the Courts below, has come forward with the Second Appeal challenging the Decree and Judgment passed in A.S.No.6 of 2009, dated 30.08.2010 by the Principal District Court, Virudhunagar District at Srivilliputhur, by confirming the Decree and Judgment made in O.S.No.18 of 2007 dated 13.08.2008 by the Sub-Court, Aruppukottai.

2. The respondents 1 and 2/plaintiffs have filed a suit in O.S.No.18 of 2007 for injunction restraining the respondents 3 to 6 and the appellant not to encumber the property. The suit was



decreed in favour of the Plaintiffs. Against which, the fifth defendant preferred an appeal in A.S.No.6 of 2009, on the file of the first Appellate Court. The first Appellate Court dismissed the appeal, confirming the Decree and Judgment of the trial Court. Against which, the present Second Appeal has been preferred.

3. Heard the learned counsel for the appellant and the learned counsel for the second respondent and perused the documents.

4. The learned counsel for the appellant/fifth defendant would submit that in Ex.A.7-partition deed, list containing the partition particulars between the four sons of Alagarsamy was not accepted by both the Courts below. Hence, he would submit that there is a substantial question of law. But the prayer in the plaint is concerned, the suit has been filed by the children relating to the branch of Balakrishnan against the legal heirs of other branches and it is only a suit filed not to encumber the property. The trial Court has granted decree in favour of the Plaintiffs which was also confirmed by the first Appellate Court.

5. In such circumstances, the appellant, who is claiming to be one of the co-owner, is not entitled to alienate the property without full-fledged partition. Hence, I am of the view that there is no substantial questions of law arisen in the Second Appeal for consideration and the same is dismissed at the stage of admission itself. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District Court,
Virudhunagar District at Srivilliputhur.

2.The Subordinate Judge,
Aruppukottai.

+1cc to Mr.S.PARTHASARATHI,Advocate Sr.No.30427

+1cc to Mr.V.P.PERUMAL,Advocate Sr.No.30628

PS

AA/SKS-RR/30.06.2016/2p-5c

S.A(MD)No.498 of 2016
14.06.2016