

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 22.09.2017	Date of Pronouncing Judgment 21.12.2017
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CORAM:

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

SA.No.523 of 2017
and CMP.No.12619 of 2017

Cause title accepted vide
order of court dated 11.10.2007
made in MP.No.1 of 2007 in
SA.SR.No.101905 of 2006

1.Anand

2.Sudhakar

3.S.Kalaimani

(Appellant No.3 brought on record
as LR's of the deceased respondent No.2
vide court order dated 13.07.2017 made
in CMP.No.7292 of 2017 in SA.SR.No.
101905 of 2006 by DKKJ) ...Appellants/Plaintiff

Vs.

1.Rajendran

2.Venkittappan (Died)

3.Saroja

4.Nagarathinam

5.Revathi

...Respondents/Defendants 2,1,3,4,5

PRAYER:

The Second appeal is filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 16.03.2006 made in AS.No.69 of 2005 on the file of the Principal District Court, Erode modifying the judgment and decree dated 22.09.2003 made in OS.No.283 of 1999 on the file of the Principal Sub Court, Gobichettipalayam.

For Appellants : Mr.N.Manokaran

JUDGMENT

The appellants / plaintiffs are the sons of first defendant. The second defendant is the brother and the defendants 3 to 5 are the sisters of the first defendant. The defendants are the sons and daughters of one Venkitappa Gounder. The suit property originally belonged to Venkitappa Gounder, paternal grandfather of the plaintiffs. Out of the wedlock between the plaintiffs' mother and the first defendant, the first plaintiff and second plaintiff are the two children. Due to the dispute between the plaintiffs' mother and the father, the plaintiffs and their mother were abandoned and first defendant was living with the second defendant at Singiripalayam. The first defendant has executed a release deed in favour of the second defendant. After came to know the release deed executed by the first defendant, the present suit has been filed by the plaintiffs by claiming that the plaintiffs are entitled to 2/15th share each of the suit property. Written statement has been filed by the defendants by denying the shares claimed by the plaintiffs and contended that item Nos.2, 4 and 5 of the suit properties are the absolute properties of the defendants 1 and 2. Therefore, the plaintiffs are not entitled to item Nos.2, 4 and 5 of the suit property. Therefore, they are not entitled for partition in the aforesaid suit property. The trial court after considering the oral and documentary evidence of both sides decreed the suit for 2/15th share in the suit properties in favour of the plaintiffs. Challenging the aforesaid Judgment and Decree passed by the trial court, the first defendant / first respondent herein has filed an appeal in AS.No.69 of 2005 before the Principal District Court, Erode. The Appellate court has modified the judgment passed by the court below to the extent that both the plaintiffs 1 and 2 are entitled for 1/15th share each and both of them put together entitled to 2/15th share. In view of the modification of allotment of share, the said appeal was partly allowed. Challenging the judgment, the appellants are before this Court.

2. The appellants have filed the Second appeal raising the following question of law.

i) Whether the first appellate court is correct in law in reducing the share to the plaintiffs to the extent of 1/15th share each.

3. The learned counsel for the appellants / plaintiffs would submit that the Appellate court modified the judgment of the trial court by reducing the allotment of share from 2/15th share each to 1/15th share each is without considering genealogical tree and law of inheritance. Under Hindu

Succession Act, the plaintiffs are entitled for 2/15th share in the suit property.

4. I have considered the submissions made by the learned counsel for the appellants and perused the materials available on record.

5. Challenging the findings of the Appellate court, the appellants have not placed any materials before this Court to prove that the plaintiffs are entitled for 2/15th share each.

6. By considering the share allotted to the plaintiffs and the first defendant, the Appellate court has rightly appreciated the facts of the case and modified the allotment of shares that the plaintiffs 1 & 2 put together are entitled to 2/15th shares. Therefore, no question of law is involved in the Second appeal. No prima facie case is made out to entertain the Second appeal.

7. In the result, the Second appeal fails and accordingly, the Second appeal stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

- 1) The Principal District Judge,
Erode
- 2) The Principal Sub Judge,
Gobichettipalayam.

Copy to:

The Record Keeper,
VR Section,
High Court, Madras.

+1 cc to Mr.N.Manokaran, Advocate sr.no.91837

in SA.No.523 of 2017
and CMP.No.12619 of 2017

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nr 16/02/2018