

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2017

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.569 of 2017

1. N. Palani
2. N. Ramesh
3. N. Rajendiran
4. N. Gothavari

Appellants/Defendants

versus

S. Chitra

Respondent/Plaintiff

Prayer: This second appeal is filed under Section 100 of C.P.C. against the Decree and Judgment, passed in A.S.No.10 of 2013, dated 11.09.2015 on the file of the District Judge at Tiruvannamalai, confirming the decree and judgment passed in O.S.No.71 of 2004, dated 18.12.2012 on the file of the Subordinate Judge of Arni at Tiruvannamalai and praying to dismiss the suit, by allowing this second appeal.

For Appellants : Mr.P.Sivamani

J U D G M E N T

Aggrieved by the unanimous and concurrent decision taken by the Courts below, the above second appeal has been filed by the defendants in the suit which was for partition.

2. The plaintiff had filed the suit, claiming 1/5th share in the "A", "B" and "C" schedules of the suit properties.

3. Admittedly, the plaintiff and the defendants 1 to 3 are the children of one Neelakanda Mudaliar and the fourth defendant. The "A" schedule properties were said to have been allotted to the said Neelakanda Mudaliar, through registered partition deed dated 26.08.1977. The "B" schedule properties are claimed to have been purchased by the said Neelakanda Mudaliar under the registered sale deeds dated 17.09.1993 and 03.12.2001, in which the sale consideration also included the contribution of the defendants 1 to 3. The "C" schedule property is a Tractor, for which there is no dispute at this point. The said Neelakanda Mudaliar died on 11.01.2003, leaving behind him the

plaintiff and the defendants as his legal heirs. Now, the plaintiff, who is the only daughter, is claiming her 1/5th share.

4. The suit was resisted by the defendants, contending that the said Neelakanda Mudaliar had no independent source of income to purchase the "B" schedule properties and the said properties were purchased out of the income derived from the ancestral properties. The plaintiff was given 35 sovereigns of gold jewels and her marriage was performed by spending more than Rupees One Lakh by the defendants. When the father was hospitalized, the other defendants had spent money for his hospitalization. Hence, the defendants have prayed for dismissal of the suit.

5. The Courts below had concurrently held that the plaintiff is entitled for 1/5th share. Aggrieved over the same, the defendants have preferred the above appeal.

6. This Court heard the learned counsel for the appellants.

7. The relationship between the parties is not disputed. The fact that the "A" schedule properties were allotted to the father (Neelakanda Mudaliar) in the partition, is also not in dispute and that the plaintiff is entitled to 1/5th share is also not disputed. In respect of the share claimed by the plaintiff in "B" schedule property, it is the case of the defendants that "B" schedule properties were purchased from the income derived from the ancestral properties and that the defendants 1 to 3 had also contributed money for the purchase of the same. Therefore, the plaintiff is not entitled to a share in the "B" schedule properties. It is pointed out by the learned counsel for the appellants that DW1, who is the mother had deposed that the "B" schedule property was purchased by her husband out of his own income.

8. Considering the said evidence of DW1, the mother, it is clear that "A" and "B" schedule properties belonged to the father, Neelakanda Mudaliar. Since the properties belonged to the father, the plaintiff who is a daughter is also entitled for equal share along with her brothers.

9. Hence, the Trial Court as well as the Appellate Court had concurrently decreed the suit for 1/5th share of the plaintiff. There is no infirmity or illegality in the judgment and decree passed by both the Courts below and hence, this Court is not inclined to interfere with the Judgment and Decree passed by the Courts below.

10. In the result, the second appeal is dismissed, confirming the Judgment and Decree dated 11.09.2015 passed by the learned District Judge, Thiruvannamalai in A.S.No.10 of 2013. No Costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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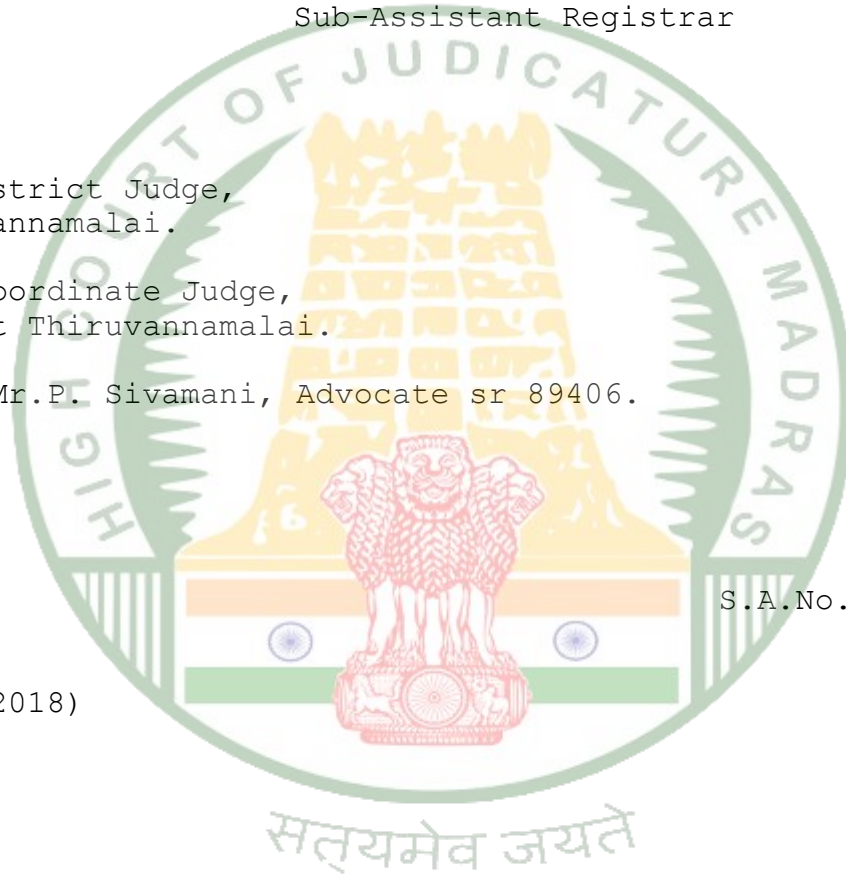
To

1. The District Judge,
Thiruvannamalai.
2. The Subordinate Judge,
Arni at Thiruvannamalai.

+1 CC to Mr.P. Sivamani, Advocate sr 89406.

PA(CO)
SP(22/01/2018)

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