

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.11.2017**

CORAM

THE HONOURABLE MS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.634 of 2017
and
C.M.P.No.7564 of 2017

Ramachandrappa ... Appellant

..VS..

1.Suseelamma
2.Annaiappa
3.Vinodhamma
4.Venkatesappa
5.Rajappa
6.Ramamurthy
7.Sundaresan

... Respondents

Second Appeal filed under Section 100 C.P.C. against the Judgement and Decree against the Judgment and decree in A.S.No.23 of 2015, pending on the file of Subordinate Judge, Hosur dated 17.11.2016 in confirming the Judgment and Decree in O.S.No.154 of 2007, on the file of Munsif Denkanikotta dated 31.08.2015.

For Appellant : Mr.V.Raghavachari

For Respondents
1 to 6

: Mr.Subbu Ranga Bharathi

JUDGMENT

The Plaintiff who has lost before the Courts below has preferred the Second Appeal.

2. The suit is filed for declaration of title and for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff.

3. As per the case of the plaintiff, the suit properties and other properties belonged to the family of one Pedda Nariyappa and his children viz., the Plaintiff and the defendants 1, 3, 5 and 7. It is stated that out of the joint family income, the Pedda Nariyappa purchased certain properties in the name of his wife. The marriage of the defendants 1,3 and 5 was performed prior to 1985 and they had never been members of the joint family. It is stated further that on 20.05.2014, there was a partition between the Pedda Nariyappan, the plaintiff and the seventh defendant, in which the 'A' schedule was allotted to Peddha Nariyappa, 'B' schedule was allotted to the Plaintiff and 'C' schedule was allotted to the seventh defendant. From the date of partition, it is alleged that the parties have been in possession of their respective properties. It is also stated that in the said partition, the mother of the Plaintiff Muniyamma was one of the attestors. The father Pedda Nariyappa executed a settlement deed in

favour of the plaintiff on 07.02.2007 and the Plaintiff is in possession of the property from the said date after effecting mutation in the revenue records. Whiles, the defendants attempted to disturb the possession of the Plaintiff. Hence, the suit has been filed.

2. Resisting the suit, denying the facts leading to cause of action in the suit, the defendants have contested that the first defendant was married only after Act 1 of 1990 came into force. Hence, she is entitled for share in the property. The defendants pleaded ignorance about the partition dated 20.05.2004. As the defendants were not parties to the partition, it is not binding on them. It is stated that the Plaintiff's mother Muniyamma purchased the extent of 238 acres in S.No.194/2, from one Thimmaiah and later in S.No.194/2, she had executed the settlement deed in respect of 1.50 acres in favour of the defendants 1, 3 and 5. Out of the balance, an extent of 50 cents was sold by her to Mohan and the remaining 19 cents were acquired by the Government for laying road. The suit was said to be bad for non joinder of parties for not impleading Mohan and Muniyamma and hence the defendants prayed for dismissal of the suit.

3. Before the trial Court, Exs.A1 to A11 were marked on the side

of the Plaintiff Exs.B1 to B3 were marked on the side of the Defendants and none examined on either side. The trial Court, after analysing the evidence had dismissed the suit and aggrieved against the same an appeal in A.S.No.23 of 2015 was filed and the same was also dismissed. As against the same, the present Second Appeal has been filed.

4.The only question to be decided is that whether the Plaintiff is entitled for declaration of the suit property. Though, it is alleged by the Plaintiff that there was a partition on 20.05.2004, as per Ex.A4, the same has not been proved. There is no reason as to why the properties standing in the individual name of the mother was included in the partition deed when no share was allotted to her. The contention of the appellant that the mother was the attestor of the document and the said document was rejected by the Courts below, for the reason that the attestor cannot be imputed with knowledge of the particulars of the documents. Even otherwise, after the alleged partition, the said Muniamma, the owner of the property had dealt with the same by settling it in favour of the defendants 1, 3 and 5 document vide dated 01.09.2006 and sold with a extent of 50 cents in favour of Mohan and the balance was acquired by the Government.

The Plaintiff has no objection to the settlement deed dated 01.09.2006 under Ex.B2 and the sale deed executed in favour of said Mohan under Ex.B3. If really the properties were allotted to the father of the Plaintiff in the partition deed and later it was settled under Ex.A5 by him, the original owner Muniamma could not have dealt with the property and Plaintiff also could not have raised any objection with respect to the above said alienations. The Plaintiff having categorically admitted that the properties were purchased in the name of the mother under Ex.B1 dated 02.01.1962, cannot deny her right to deal with the property. Even in the Plaint, there is no whisper about the alleged settlement deed and Sale Deed as per Exs. B2 and B3.

5. So far as the purchase in the name of the mother is concerned, the burden is on the Plaintiff to establish that the property was purchased in the name of the mother from and out of the income derived from the Joint Family Property. Admittedly, the Plaintiff has not produced any evidence in that regard. When the property under Ex.B1 was added in the partition deed, the mother was not allotted any share. Though it is alleged by the Plaintiff that the mother was attestor of the document, the Courts below had rightly rejected the said contention and held that the plaintiff has failed to establish that

the property was purchased out of the joint family income in the name of the mother. As the partition deed did not include the mother or other defendants, the same is not binding on them.

6. On the above said finding, the Courts below have concurrently held that the Plaintiff is not entitled to the decree as prayed for. The finding recorded by the trial court as well as appellate Court did not suffer from any error to say that the same being perverse. There is no question of law arising in the above said facts, for consideration.

7. In the result, this Second Appeal is dismissed, confirming the Judgment and decree of the Courts below. No costs. Consequently, connected Miscellaneous petition is closed.

28.11.2017

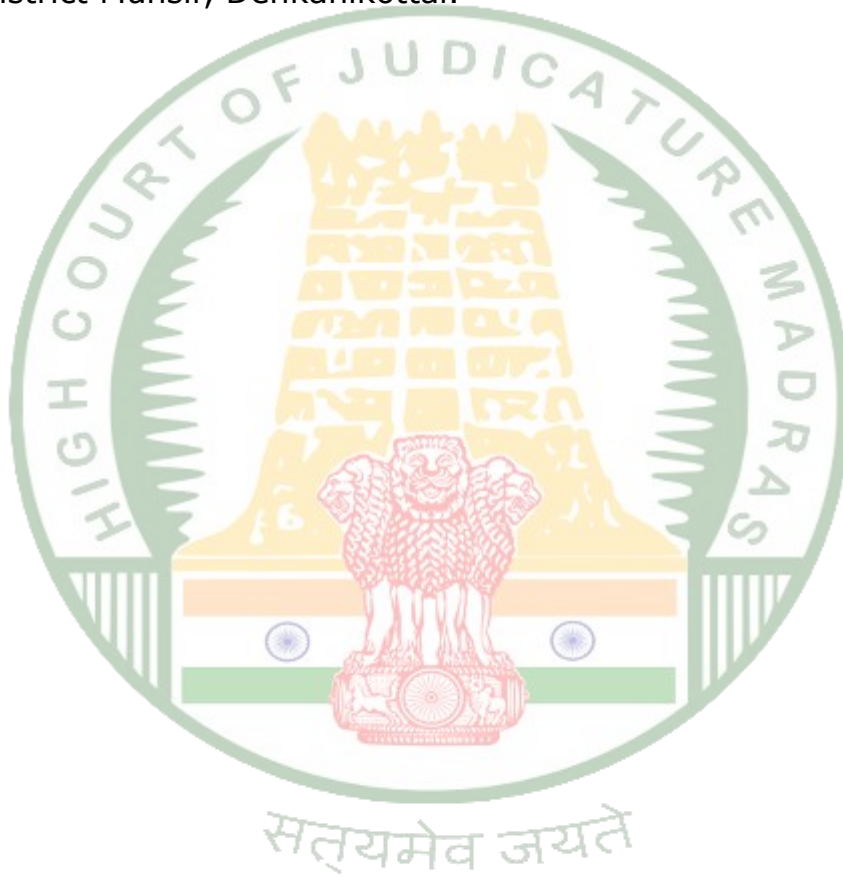
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To

1. The Subordinate Judge, Hosur
2. The District Munsif, Denkanikottai.



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PUSHPA SATHYANARAYANA,J

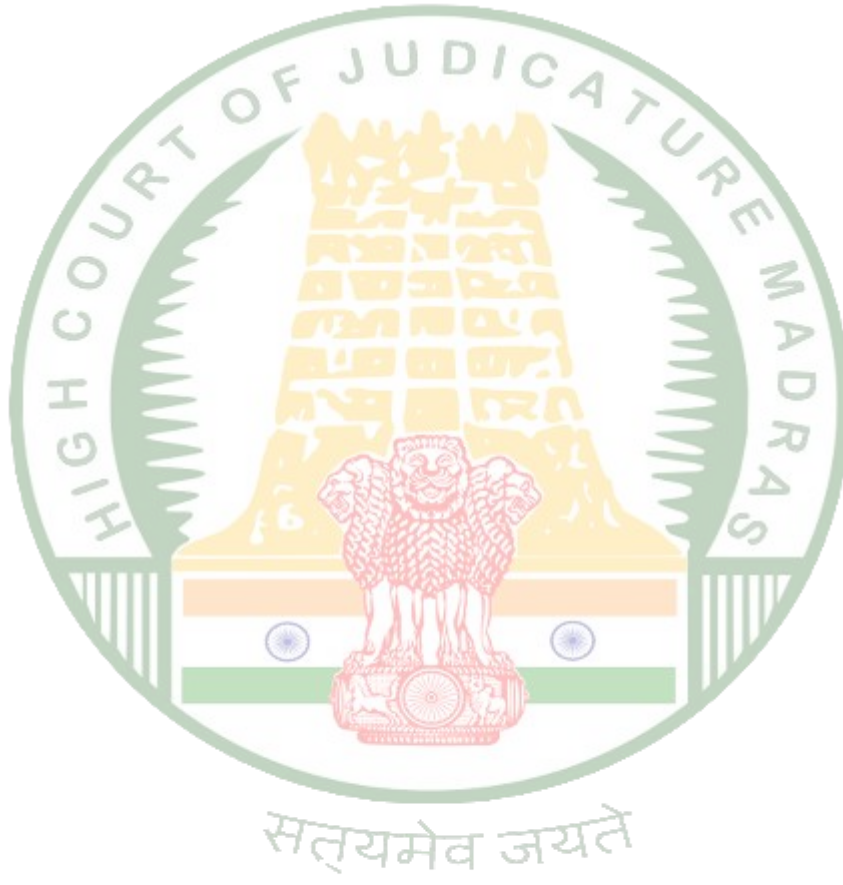


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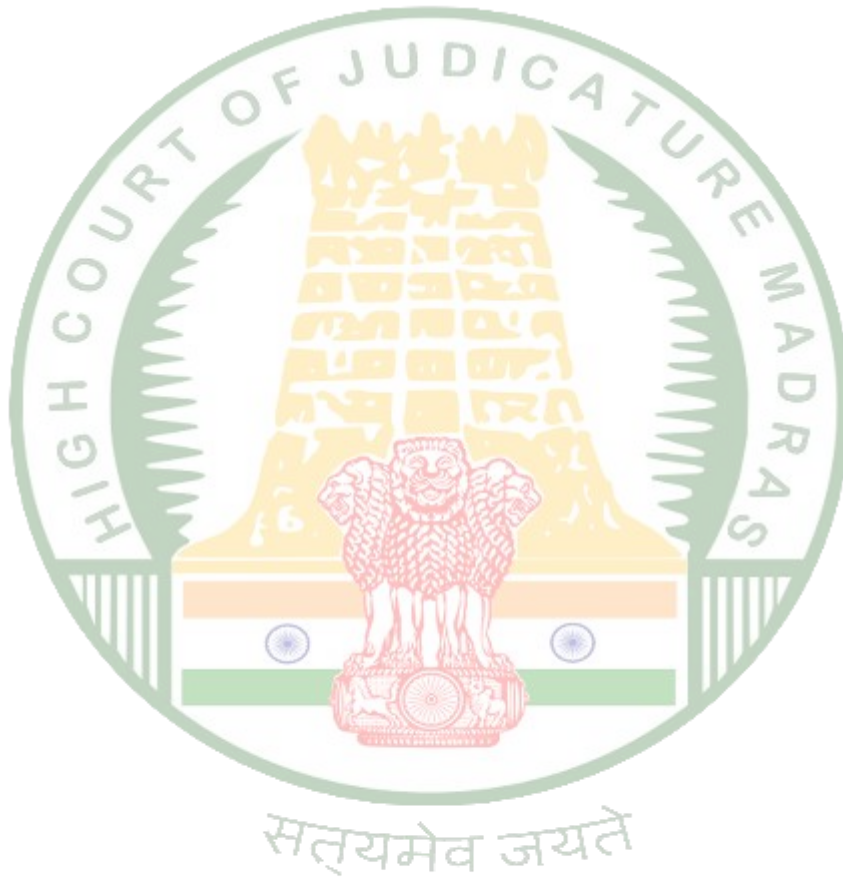
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