

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2017

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.688 of 2017
and C.M.P.No.17716 of 2017

1. Sulochana
2. Padma
3. Muniyammal
4. Mallika
5. C. Sukkalaraj
6. Vimala
7. K.S. Ashok Kumar
8. Daya Sekar
9. S. Sumathi
10. Shakila

... Appellants/Appellants/
plaintiffs
vs.

1. C. Babu
2. C. Krishnamoorthy
3. B. Sivaram
4. M. Nazar
5. Srinivasan
6. Ashokji
7. S. Syed Ahamed

... Respondents/Respondents/
Defendants

Prayer: This second appeal filed under Section 100 of C.P.C. against the judgment and decree of the learned Additional Special Judge of Krishnagiri dated 12.01.2017 in A.S.No.44 of 2014 confirming the judgment and decree of the learned District Munsif, Krishnagiri dated 17.10.2014 in O.S.No.363 of 2007.

For Appellants : Mr.C.N.Hariharan
for M/s.V.Nicholas

J U D G M E N T

The unsuccessful plaintiffs, who have filed the suit for declaration and recovery of possession, have filed the above second appeal.

2. The Plaintiffs 1 to 5 and one C.Sargunam are the children of Chinnaraj Naidu and Navaneethammal. Plaintiffs 6 to 10 are the legal heirs of the said Sargunam. It is stated that as per sale deed dated 30.11.1948 the father of the said plaintiffs had purchased the suit property within specific

boundaries and he had been in possession and enjoyment throughout his life. After the death of the said Chinnaraj Naidu and his wife, the plaintiffs claim to be in possession of the property. While so, 4th defendant had created nominal sale deed dated 20.12.2010 in the name of 7th defendant. It is stated that the said sale deed is not binding on the plaintiffs. The defendants have got no manner of right or title or possession of the suit property. Therefore, the suit has been filed.

3. However, the defendants have totally denied the averments in the plaint and claimed that it belongs to the father of the first defendant namely Chinnasamy Naidu, which he had got under an oral partition. It is further stated that after the said partition, each of the sharers was enjoying the same exclusively. It is admitted by the defendants that the property was purchased in the name of the first plaintiff's father, however, it was enjoyed by the first defendant's father only. The case of the defendants is that after the oral partition, the suit property was allotted to the first defendant's father and they have been in enjoyment of the property and also dealt with the same. Hence, prayed for dismissal of the suit.

4. Based on the above averments and considering the oral and documentary evidence, the Courts below have concurrently held that the plaintiffs are not entitled for the relief as prayed for. Aggrieved by the same, the above appeal has been filed.

5. A perusal of the records show that there is no title deed or any other document to prove the title and possession of the plaintiffs. Even, Ex.A2 patta is in the name of the 4th defendant. Above all, the first plaintiff herself as PW1 has deposed that the suit properties were purchased from the joint family income and each time, when a property was purchased, it was purchased in the name of one of the sharers. However, when the partition was effected, the property standing in the name of one person would go to the share of the other person. She has deposed further that the property that was allotted to the father of plaintiffs 1 to 5 was divided orally between them. Based on the said admission, the Courts below have held that the plaintiffs cannot claim any right or title over the suit property.

6. As admitted facts need not be proved, the plaintiffs have to be non suited based on their admission itself. However, the defendants also have proved in this case their right and possession over the suit property by producing the revenue records. Therefore, Courts below have rightly dismissed the suit. In the absence of any question of law arising for consideration in this appeal, there is no reason to interfere with the concurrent finding of the Courts below.

7. In the result, the Second Appeal is dismissed, confirming the judgment and decree dated 12.01.2017 passed by the Lower Appellate Court in A.S.No.44 of 2014. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

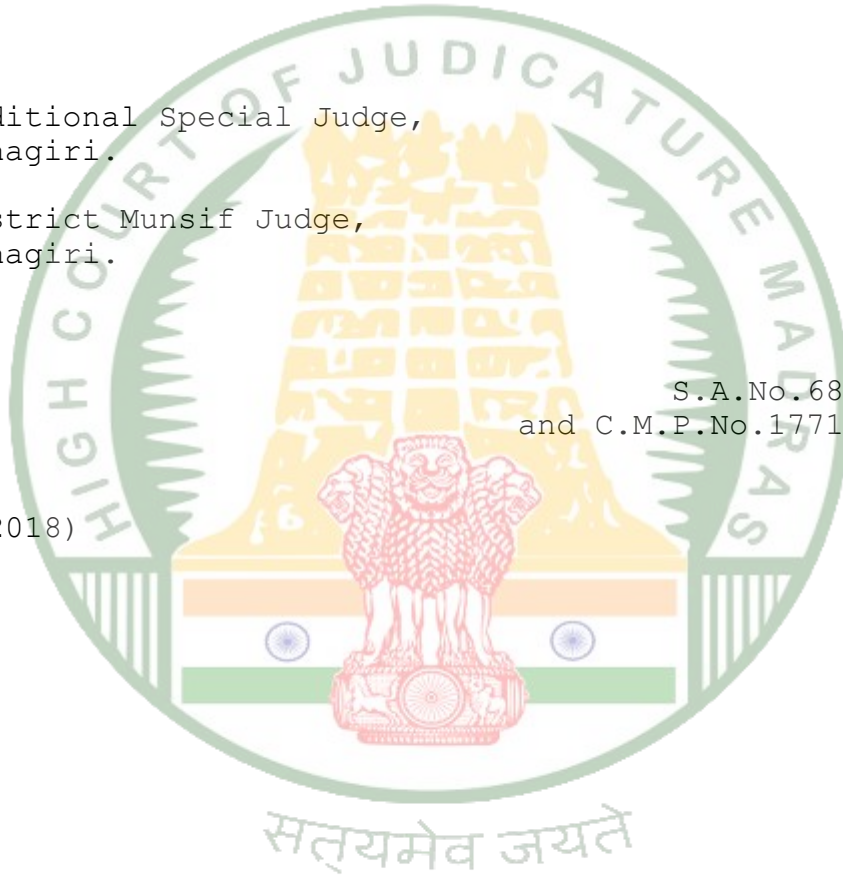
Sub Assistant Registrar

rsi
To

1. The Additional Special Judge,
Krishnagiri.
2. The District Munsif Judge,
Krishnagiri.

S.A.No.688 of 2017
and C.M.P.No.17716 of 2017

rsi (CO)
TR(05/01/2018)



WEB COPY