

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2017

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

Second Appeal No.9 of 2017
and
C.M.P.No.85 of 2017

1.Ariyappan

2.Minor Ramya

3.Minor Vinodh

4.Chockammal

... Appellants (Defendants
1, 3 to 5)

(minor appellants 2 and 3 are rep. By
their father and guardian 1st appellant)

Vs

1.Kullammal

2.Sarguna

... Respondents (Plaintiffs)

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 20.02.2014 passed in A.S.No.20 of 2008 on the file of the IV Additional District Court, Ponneri, confirming the judgment and decree dated 25.04.2006 passed in O.S.No.76 of 1999 on the file of the Sub Court, Ponneri.

For Appellants : Mr.S.Thirumavalavan

For Respondents : Mr.R.Krishnaswamy

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JUDGMENT

Though the petition for condonation of delay of 740 days in filing the appeal has been listed for hearing, by consent, the main appeal itself is taken up for hearing, after allowing the petition for condonation of delay.

2.The defendants 1, 3, 4 and 5 are the appellants. The suit has been laid by the respondents for partition and separate

possession. The first plaintiff is the wife and the second plaintiff is the daughter of one Vadivelu, who was the son of Natesa Reddy. The deceased Natesa Reddy had two sons and one daughter viz., Vadivelu, Ariyappan and Malliga respectively. The daughter - Malliga died during the lifetime of Natesa Reddy. The wife of Natesa Reddy also predeceased him. The first appellant is the son of Natesa Reddy, thus incidentally, the brother of the deceased Vadivelu. The other appellants are the children of the first appellant.

3. Before the trial Court, the appellants did not raise any objection for partition. Therefore, the only issue that was before the Courts below was with respect to the discharge of the family debts. To substantiate the same, the appellants have produced a document, which is a No Due Certificate issued by the Ayyanallur Primary Agriculture Co-operative Bank, for a sum of Rs.27,000/-. Incidentally, D.W.1 has also deposed to the effect that there are prior debts available.

4. The Courts below, while rejecting the evidence of D.W.1, also did not accept the contention placing reliance upon the No Due Certificate issued on the premise that mere production of No Due Certificate by itself would not lead to an inference that the said amount has been cleared only by the appellants alone. Therefore, the only issue to be considered in this appeal is as to whether the prior debt, if any, is discharged by the appellants or not.

5. Learned counsel appearing for the appellants submits that considering the evidence of D.W.1 and in the light of the document produced by the appellants, the appeal will have to be allowed.

6. Learned counsel appearing for the respondents submits that both the Courts have concurrently found that Ex.B1 will not lead to such an inference and therefore, no interference is required.

7. As rightly found by the Courts below, there is absolutely no documentary evidence to show that there were previous debts and profits, as alleged by the appellants. Ex.B1 is only a No Due Certificate issued by the Ayyanallur Primary Agriculture Co-operative Bank. From that, it cannot be said that the said amount has been cleared only by the appellants alone. The lower appellate Court has rightly observed that D.W.2 is an interested witness and therefore, in the absence of any documentary evidence in support of the contentions of the appellants, the same cannot be accepted. When once the appellants have taken a plea that the plaintiffs are making income out of the suit property and there exists prior debts, it is for them to discharge the said burden of proof. The appellants have

miserably failed to prove the same before the Courts below. In such view of the matter, this Court does not find any substantial question of law involved in this appeal, warranting interference. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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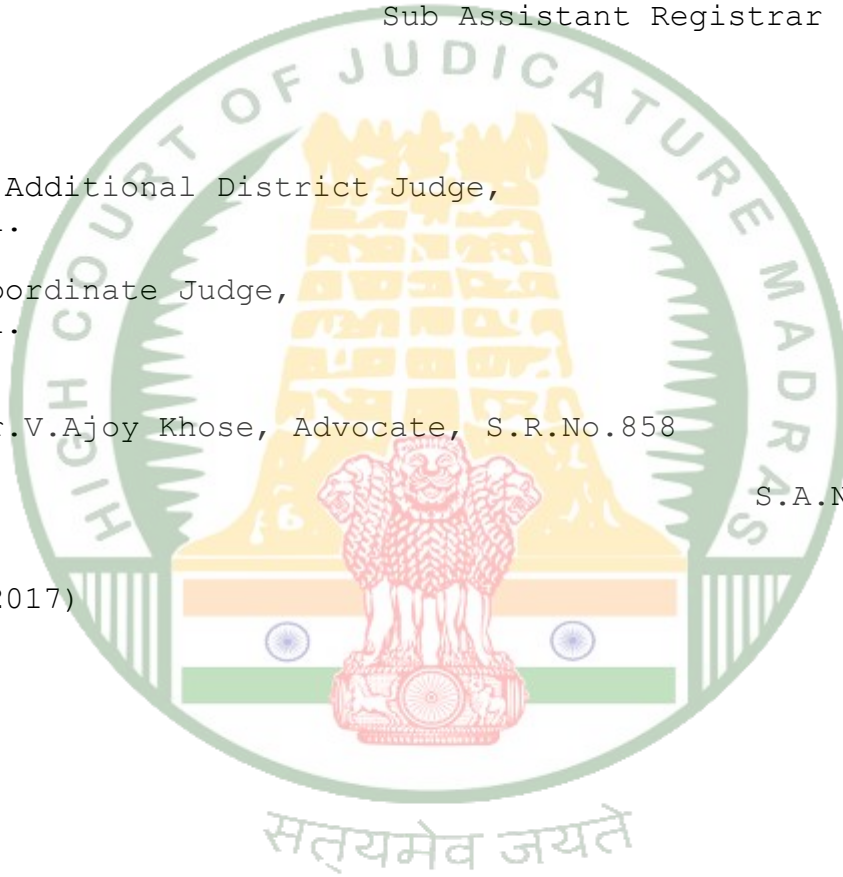
To

1. The IV Additional District Judge,
Ponneri.
2. The Subordinate Judge,
Ponneri.

+lcc to Mr.V.Ajoy Khose, Advocate, S.R.No.858

S.A.No.9 of 2017

SV(CO)
CA(09/02/2017)



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