

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.07.2017

CORAM

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Second Appeal No.255 of 1999

1.Karuppa Gounder
2.Subramaniam

.. Appellants/Plaintiff

/versus/

1.Nanjappa Gounder @ Rangappa Gounder
2.Kolandayammal
3.Karuppa Gounder
4.Sivakami
5.Valliammal

.. Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.34 of 1998 dated 13.10.1998 on the file of the Sub Court, Gobichettipalayam confirming the judgment and decree in O.S.No.263 of 1994 dated 20.02.1998 on the file of the District Munsif Court, Gobichettipalayam.

For Appellants :Ms.P.T.Ramadevi

For Respondents:Mr.R.Bharath Kumar for R1
R2 to R5- No appearance

JUDGMENT

This second appeal is arising out of concurrent finding of the Courts below. In the suit filed for declaration and for permanent injunction, the plea of civil death of the first respondent for not being heard from 1962 to 1993 and to draw presumption under Section 108 of Indian Evidence Act, 1872 was raised. The said plea was not accepted by the Courts below.

2. When the matter is taken up for final disposal, it was reported by the parties that compromise has already been arrived at between the parties and sought time to report settlement. When the case was taken up today, both the learned Counsel were not able to assist the Court, since according to them, the parties have not turned up to give appropriate instruction. However, the learned counsel for the appellant produces a draft compromise deed entered between the parties on 24.05.1999.

3. On merits, the perusal of judgments and decrees passed by the Courts below and the grounds of the appeal, this Court finds no ground to interfere with the concurrent findings of the

Courts below. There is no substantial question of law involved in this case, though at the time of admission, the following substantial questions of law were framed:

"1. Have not both the courts below committed an error of law in not drawing the presumption under Section 108 of the Evidence Act on account of the death of the first respondent for more than seven years?

2. Is not the finding by the Courts below regarding the partition deed dated 4.4.1978 is vulnerable and not final and conclusive?

3. Is the finding by the Courts below regarding the plead of adverse possession legally correct and sustainable in view of the abundant documentary evidence let in to prove exclusive possession and acquisition of absolute title over the suit properties?"

since presumption under Section 108 of Indian Evidence Act, 1872 is the question of fact, unless and until, the evidence let in by the respective parties satisfies Section 108 of Indian Evidence Act, 1872, no presumptive finding could be given.

4. This Court make it clear that if any compromise has already been arrived at between the parties, the dismissal of the second appeal will not prejudice the said compromise.

5. In the result, the second appeal is dismissed. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Sub Court, Goichettipalayam.

2. The District Munisf Court, Gobichettipalayam.

+1 CC to Ms. P.T.Ramadevi, Advocate sr 46941.

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AK (CO)

sp (07/08/2017)