

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.07.2017

Coram

The Honourable Dr.Justice G.JAYACHANDRAN

Second Appeal No.913 of 1999

Thamsuddin

.. Appellant/Plaintiff

/versus/

1.Basheerkhan (deceased)

2.Jaithoonbi

3.Dhahirkhan

4.Rehna

(RR2 to 4 brought on record as LRs of the deceased sole respondent vide order of this Court dated 09.02.2017 made in C.M.P.No.17763 to 17765 of 2001 in S.A.No.913 of 1999 by GJJ)

.. Respondents/Defendants

Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 23.08.1996 made in A.S.No.26 of 1996 on the file of the Court of the Civil Judge, Senior Division, Kallakurichi and judgment and decree dated 22.12.1993 made in O.S.No.753 of 1981 on the file of the Court of the Principal District Munsif of Kallakurichi.

For Appellant :Mr. T.Dhanasekaran

For Respondents:Ms.A.Nilaphar for

Ms.R.Meenal for R2 to R4

J U D G E M E N T

The suit for declaration and possession filed by Thamsuddin, who is the appellant herein, claiming right over the property through his mother. However, both the Courts below have found that the plaintiff on the date of filing the suit had no title over the property since he sold away his share under Ex.B1 and further being a Muslim his right on the death of his mother's property is not an automatic one at the most he can be tenancy. Therefore he cannot file the suit on behalf of the other sharers without any legal sanction or authorization given by the other sharers. Apart from that, both the Courts below have found that the description of the property has not been properly furnished in the plaint. All the reasons, the suit has been dismissed. Appeal preferred by him was also dismissed by confirming the judgment and decree of the trial Court.

2. Aggrieved by the said concurrent findings given by the Courts below, the second appeal has been preferred. When the second appeal was preferred by the plaintiff against the concurrent judgments of the Courts below, this Court has not admitted the second appeal but, only ordered notice for admission. Unfortunately, the matter is kept pending since 1999.

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for respondents 2 to 4 and perused the materials available on record.

4. On perusal of the grounds of appeal and considering the submission of the learned counsel on either side, this Court finds that no substantial question of law is involved in this case. On facts, the appellant has lost his case before the Courts below.

5. Therefore, the Second Appeal is dismissed. No costs.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Civil Judge, Senior Division,
Kallakurichi.
2. The Principal District Munsif of
Kallakurichi.

+1 CC to Mr.N. Maninarayanan, Advocate sr 53392

+1 CC to Mr.R. Subramanian, Advocate sr 53091.

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S.A.No.913 of 1999

AK (CO)
sp(30/08/2017)