

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

AS.No.591 of 2010

Yasodhammal ...Appellant/Plaintiff  
vs.

1. Gnanamani  
2. Tamilarasan ... Respondents/Defendants

Appeal suit is filed under Section 96 of Code of Civil Procedure against the Judgment and Decree dated 20.11.2006 made in O.S.No.58 of 2006 on the file of the Principal District Court, Chengalpattu.

For Appellant : Mr.R.Subramanian

For Respondents : Mr.C.Venkatesh for R2

J U D G M E N T

The appeal is by the plaintiff in OS.No.58 of 2006. The suit was laid by the plaintiff seeking partition and separate possession of half share in two items of properties which according to her belonged to her mother Amirthammal who died on 21.11.1989 leaving behind herself and the first defendant as legal representatives. The second defendant is son of the first defendant. It is also stated that the 3rd daughter of Amirthammal by name Gowri has pre-deceased Amirthammal unmarried.

2. Before the trial Court the defendant remained exparte. However, the learned trial Judge dismissed the suit holding that the plaintiff has not established that the suit properties were owned by Amirthammal. It is against the said dismissal of the suit the plaintiff has come forward with the appeal.

3. Heard Mr.R.Subramanian, learned counsel for the appellant and Mr.C.Venkatesan, learned counsel for the second respondent. The first respondent though served has not appeared either in person or through counsel.

4. The conclusion of the learned trial Judge on the face of it is incorrect, in a suit for partition the Court will not

go into the question of title of the suit property. The defendants have remained exparte they had not denied the title of Amirthammal to the suit property. The plaintiff has filed proof affidavit wherein she has categorically stated that the property belonged to Amirthammal. There is no cross examination on that also.

5. In the light of the said evidence, I am unable to comprehend as to how the trial Court has concluded that the plaintiff has not established the ownership of Amirthammal over the suit property. In view of the above, the judgment and decree of the trial Court is set aside. The appeal is allowed. The matter is remitted back to the trial Court for fresh trial in accordance with law.

6. The defendants/ respondents shall file the written statement within two months from the date of their first appearance before the trial Court and on such written statment being filed, the tiral Court is directed to proceed further in accordance with law and dispose of the suit.

7. The parties are directed to appear before the trail Court on 23.10.2017. It is made clear that they will not be entitled to any notice from the trial Court.

8. Registry is directed to send back the records to the trial Court forthwith.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Principal District Court,  
Chengalpattu.

2.The Section Officer,  
(Send back the Records to the Trial Court forthwith)  
VR Section, High Court, Madras.

A.S.No.591 of 2010

CNR (CO)  
GN (13/10/2017)