

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2017

PRONOUNCED ON : 09.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.547 of 2011

Gowri ... Appellant

Vs.

1. Krishnan
2. Venkateswaran
3. Shanmugasundaram
4. Balsubramanian
5. Karthikeyan
6. Sekar
7. Rani
8. Anandhi
9. Kabali
10. Bagyalakshmi

... Respondents

(Respondents 6 to 10 exparte
and hence given up.)

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Principal District Judge, Villupuram, in A.S.No.43 of 2006 dated 02.10.2010 confirming the judgment and decree of the learned Principal Subordinate Judge, Tindivanam in O.S.No.80 of 1991 dated 31.01.2005.

For Appellant : Mr.S.Mukundan
for M/s.Sarvabhauman Associates

For Respondents : Mr.Kaithamalai Kumaran

JUDGMENT

In this second appeal, the plaintiff has impugned the judgment and decree dated 02.10.2010 made in A.S.No.43 of 2006 on the file of the Principal District Court, Villupuram, confirming the judgment and decree dated 31.01.2005 made in O.S.No.80 of 1991 on the file of the Principal Sub Court, Tindivanam.

2. The suit has been laid by the plaintiff for partition.

3. The plaintiff has succeeded in the trial Court. The defendants, aggrieved over the same, preferred the first appeal. The first appeal preferred by the defendants also ended in dismissal. However, the plaintiff has preferred this second appeal on the short point that the first appellate court, while concluding the matter, has held that while allotting the shares, the properties purchased by the defendants 4 to 8 from the defendant 1 to 3 should be allotted to the shares of the defendants 1 to 3. This aspect of the matter is now challenged in this second appeal.

4. It is found that the defendants 4 to 8 have purchased the properties from the defendants 1 to 3. Admittedly, the defendants 1 to 3 have also got shares in the suit properties. Inasmuch as the defendants 4 to 8 have purchased the properties from the defendants 1 to 3, it could be seen that in equity, the first appellate court thought it fit to hold that the shares purchased by the defendants 4 to 8 should be allotted to the shares of the defendants 1 to 3 at the time of the final decree proceedings. It has not been explained as to what prejudice has been caused to the plaintiff by the above said direction of the first appellate court, given on the basis of equity and also in the interest of justice. It has not been established as such the properties purchased by the defendants 4 to 8 from the defendants 1 to 3 are valuable properties and also the other portion of the suit properties are less valued. Therefore, in my considered opinion, no interference is called for in the above said direction of the first appellate court, which had been passed, considering the position that the defendants 4 to 8 have admittedly purchased the properties from the defendants 1 to 3 and also on the basis of equity and in the interest of justice.

In conclusion, no substantial question of law is found to be involved in this second appeal. Accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2017

Index : Yes/No
Internet: Yes/No
sms

To

1. The Principal District Court, Villupuram.
2. The Principal Sub Court, Tindivanam.

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
S. A.No.547 of 2011

09.02.2017

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