



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A. (MD) No.335 of 2017

and

C.M.P. (MD) No.7229 of 2017

S.Rajan (died)

1.Saroja

2.Seetha Devi

3.Jeyapratha

4.Rajaramnath

... Appellants/Plaintiffs

-vs-

1.Muthurakku

Alagammal (died)

2.Sulochana

... Respondents/Defendants

PRAYER: Appeal is filed, under Section 100 of Civil Procedure Code, to set aside the judgment and decree of the Court of learned VI Additional District Judge, Madurai, passed in A.S.No.11 of 2013, dated 02.03.2016, confirming the decree and judgement of the learned Subordinate Judge, Melur Camp Court in O.S.No.337 of 2004 dated 12.12.2012.

For Appellants : Mr.M.Rajaraman

For Respondents : Mr.H.Arumugam

J U D G M E N T

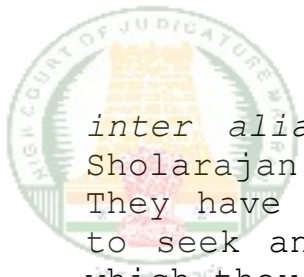
The plaintiffs, who lost their case before the Courts below have laid the second appeal.

2. The suit has been laid by the plaintiffs for partition and mesne profits.

3. Claiming that the suit properties are the ancestral properties / joint family properties of Sholarajan, the plaintiffs sought for partition of their respective shares in the suit properties.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The defendants have resisted the case of the plaintiffs



inter alia by projecting a Will dated 08.08.2002, executed by Sholarajan in respect of the first item of the suit properties. They have also taken a plea that the plaintiffs are not entitled to seek and claim any share in the suit properties or shares to which they had sought for in the plaint.

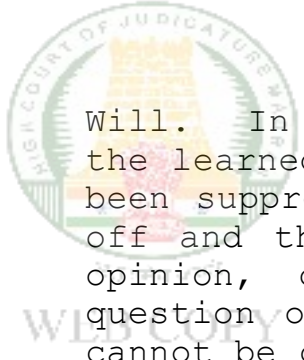
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5. In support of the plaintiffs' case, P.Ws.1 and 2 were examined and Exs.P1 to P13 were marked and on the side of the defendants', D.Ws.1 to 4 were examined and Exs.D1 to D5 were marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the Trial Court was pleased to partly allow the suit i.e., dismissed the suit as against the first item of the suit properties and held that the plaintiffs are entitled to obtain 4/6th share in Item Nos.2, 3, 4, 11, 12, 17, 19, 22, 33, 34 and 35, 20 Cents in the 5th Item of the suit properties and also 1/3rd share in the self-acquired properties of Sholarajan and accordingly, passed a preliminary decree in favour of the plaintiffs.

7. Aggrieved over the same, the plaintiffs preferred an appeal before the First Appellate Court and the First Appellate Court, on a consideration of the materials placed and the rival contentions put forth by the respective parties, concurred with the judgement and decree of the Trial Court and dismissed the first appeal. Challenging the same, the second appeal has been preferred.

8. On a perusal of the memorandum of the grounds of appeal filed along with the second appeal and after hearing the learned counsel for the appellants and on a reading of the concurrent Judgments and decrees of the Courts below, I find that there is no substantial question of law involved in this second appeal. It is mainly contended by the learned counsel for the appellants that the defendants have not projected the second Will in respect of the suit properties said to have been executed by Sholarajan and the failure on the part of the defendants in projecting the said Will would render the defence invalid and according to the learned counsel for the plaintiffs, on account of the second Will said to have been executed by Sholarajan, the first Will has become invalid or cancelled and therefore, the Courts below had erred in dismissing the claim of the plaintiffs in respect of the first item of the suit properties. However, as seen from the defence put forth by the defendants, the second Will has been projected only as regards the other items of the suit properties and not as regards the first item of the suit properties. Be that as it may, the said Will has not been produced in the Court. Therefore, it is found that as on date, there is no second Will said to have been executed by Sholarajan, after the execution of the first



Will. In such view of the matter, the contentions put forth by the learned counsel for the appellants that the second Will having been suppressed by the defendants, their defence should be struck off and the plaintiffs' case should be accepted in toto, in my opinion, cannot be accepted in any manner. Therefore, the question of law projected on the above lines is rejected and it cannot be countenanced.

9. It is contended by the learned counsel for the appellants that the Will dated 08.08.2002, marked as Ex.B1 has not also been proved in the manner known to law. Considering the defence put forth by the defendants, particularly, the evidence of the attesting witnesses, it is seen that through the evidence of the attesting witnesses, the defendants have established the authenticity of the Will and therefore, the findings of the Court below with reference to the same, do not call for any interference from this Court and therefore, the questions of law projected as regards the said point does not merit any acceptance.

10. In toto, considering the judgements and decrees of the Courts below and also the memorandum of the grounds of appeal projected in the second appeal and for the foregoing reasons, it is seen that no substantial question of law is found to be involved in this second appeal.

11. Resultantly, the second appeal is dismissed. Consequently, connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To:

1. The VI Additional District Judge,
Madurai.

2.The Subordinate Judge,
Melur Camp.

+1 cc to Mr.M.Rajaraman , Advocate in SR.No. 71047

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AE/KP/SAR2/18.08.2017/3P/4C

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