



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2017

CORAM:

THE HONOURABLE Mr. JUSTICE **N. SESHASAYEE**

SA (MD) No. 555 of 2016

WEB COPY

Kayambu

... Appellant/Appellant/Plaintiff

Vs.

1. Azhagaiya

2. Santhalakshmi

3. Rajendran

4. Vijayakumari

5. Malarmani

6. The Sub Registrar,

Sub Registrar Office,

Madhagupatti Village,

Sivagangai District.

... Respondents/Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 07.03.2015 in A.S.No.32 of 2014 on the file of the Learned Sub Court, Sivagangai confirming the Judgment and Decree dated 03.02.2014 in O.S.No.183 of 2011 on the file of the Learned District Munsif Court, Sivagangai.

For Appellant

: Mr. P. Vadivel

For RR- 1 to 5

: Mr. R. Vijayakumar

For R -6

: Mr. A. K. Baskarapandian

Special Government Pleader

J U D G M E N T

The plaintiff has preferred this Second Appeal against the concurrent judgments and decrees of the courts below dated 07.03.2015 in A.S.No.32 of 2014 on the file of the Sub Court, Sivagangai and dated 03.02.2014 in O.S.No.183 of 2011 on the file of the District Munsif Court, Sivagangai.

2. The suit was laid for partition of the suit property and also for cancellation of certain documents executed by the first defendant.

3. The case of the plaintiff, in short, is that the plaintiff and the first defendant are brothers and the first defendant is the elder and that they came from Srilanka on 09.01.1973 as Srilankan repatriates pursuant to the 'Sastri Srimavo Pandaranayaka Pact'. On arrival, both items of the suit properties were assigned by the State Government to the first defendant. It is his further case that the suit properties were assigned to the first defendant not for his benefit but for the benefit of the entire family. Since the



first defendant happened to be the eldest son, the assignment was given to him.

4. The first defendant has essentially contended that the assignment was given to him in his individual capacity and not as a representative of the family and that he has put up construction and enjoying the item No.2 himself. He would allege that the plaintiff has obtained an employment in the Government hospital and he was never living with him.

5. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 5 and the learned Special Government Pleader appearing for the sixth respondent.

6. The crucial aspect of the matter can be decided based on the contents of the assignment order issued by the Government. But, the plaintiff at no point of time has attempted to obtain the copy of the assignment order or has taken steps to bring on record the assignment order. He has not even issued notice to produce the said document by the first defendant to enable the Court to draw adverse inference, if need be. This aspect of the matter has formed the core of the reasoning of the trial court as well as the First Appellate Court.

7. I find no infirmity in the approach of the courts below. Though this Second Appeal was filed in the year 2016, the same is not yet admitted and hence, no substantial question of law has been framed by this Court.

8. In the result, this Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The Sub Judge, Sivagangai
- 2.The District Munsif, Sivagangai.

+1cc to M/S.R.Vijayakumar, Advocate SR.No. 60472

+1cc to M/S.P.Vadivel, Advocate SR.No. 60846

+1cc to Special Government Pleader, SR.No. 60547

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