

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.117 of 2018
and
C.M.P.No.2635 of 2018

A. Pichandi ..Appellant/Defendant 1

versus

1.Yasodammal ..Respondent/Plaintiff

2. A. Baskaran ..Respondent/Defendant 2

Prayer: This second appeal is filed under Section 100 of C.P.C. against the Judgment and Decree dated 14.03.2013 in A.S.No.43 of 2012 on the file of the Subordinate Judge, Arni, Thiruvannamalai District confirming the decree and judgment dated 29.04.2011 in O.S.No.375 of 2007 on the file of the District Munsif, Arni.

For Appellant : Mr.R.Rajarajan

J U D G M E N T

The first defendant, aggrieved by the concurrent findings of the Courts below, has filed the above second appeal.

2. The suit property belonged to one Arimuthu Gounder. The said Arimuthu Gounder executed a settlement deed in favour of the plaintiff and the defendants 1 and 2 on 26.10.2006. As per the settlement deed, the parties to the suit have enjoyed the suit property by dividing the magasul from the schedule properties. The said Arimuthu Gounder died on 03.01.2007. The plaintiff is the daughter and defendants 1 and 2 are the sons. Despite the settlement deed, the defendants refused to give the share to the plaintiff. Hence, the suit has been filed.

3. The suit was resisted by the defendants contending that the suit properties are not self acquired properties and are joint family properties and the father Arimuthu Gounder did not have any right to execute the settlement deed. They have also

stated that the plaintiff was not in possession of the property and the suit is also filed for partition.

4. Before the Trial Court, the plaintiffs examined P.Ws.1 to 3 and marked Exs.A.1 to A.4. On the side of the defendants, D.W.1 was examined.

5. The Courts below have concurrently held that the plaintiff was entitled to a decree as prayed for. The father Arimuthu Gounder had executed a settlement deed allotting 1/3 share to each of the children as early as on 26.10.2006 to avoid future litigation. Till the death of the father, the parties were enjoying the properties jointly. After his death, the defendants had changed their mind and refused to give lawful share of the plaintiff. It is the case of the defendants that 0.16 cents in Pazhagamur Village, Arni Taluk was not added in the suit property.

6. Ex.A1 was executed by Arimuthu Gounder in the year 2006. Even in Ex.A1, it is specifically mentioned that the properties are self-acquired by Arimuthu Gounder. The plaintiff was examined as P.W.1 and to substantiate her case P.W.2 and P.W.3 were also examined. Though the defendants had taken specific stand that the properties are not self acquired properties and they are joint family properties, in his evidence, he has admitted that the properties are separate properties of Arimuthu Gounder and the patta also stands in his name. The defendants also had not established by any convincing evidence that there were joint family properties available in the family. P.W.2 and P.W.3 are the attestors in the settlement deed executed by the Arimuthu Gounder on 26.10.2006. They have also categorically deposed about the execution of the settlement deed, and that the settlor himself had told them that the suit properties were his self-acquired properties. When the defendant has taken specific plea that the father did not execute the settlement deed, the burden is on him to establish his case. In the absence of any convincing evidence to show that they are ancestral properties and the father did not have any right to execute the sale deed, the Courts below have rightly decreed the suit based on the evidence adduced by the plaintiff. There is no infirmity in the said findings of the Courts below to interfere with the same. In the absence of any question of law, much less substantial question of law, this Court is not inclined to interfere with the judgment of the Courts below.

7. In the result, the second appeal is dismissed, confirming the Judgment and Decree dated 14.03.2013 passed by the learned Subordinate Judge, Arni in A.S.No.43 of 2012 and the Judgment and Decree dated 29.04.2011 passed by the learned

District Munsif, Arni in O.S.No.375 of 2007. No Costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

rsi

To

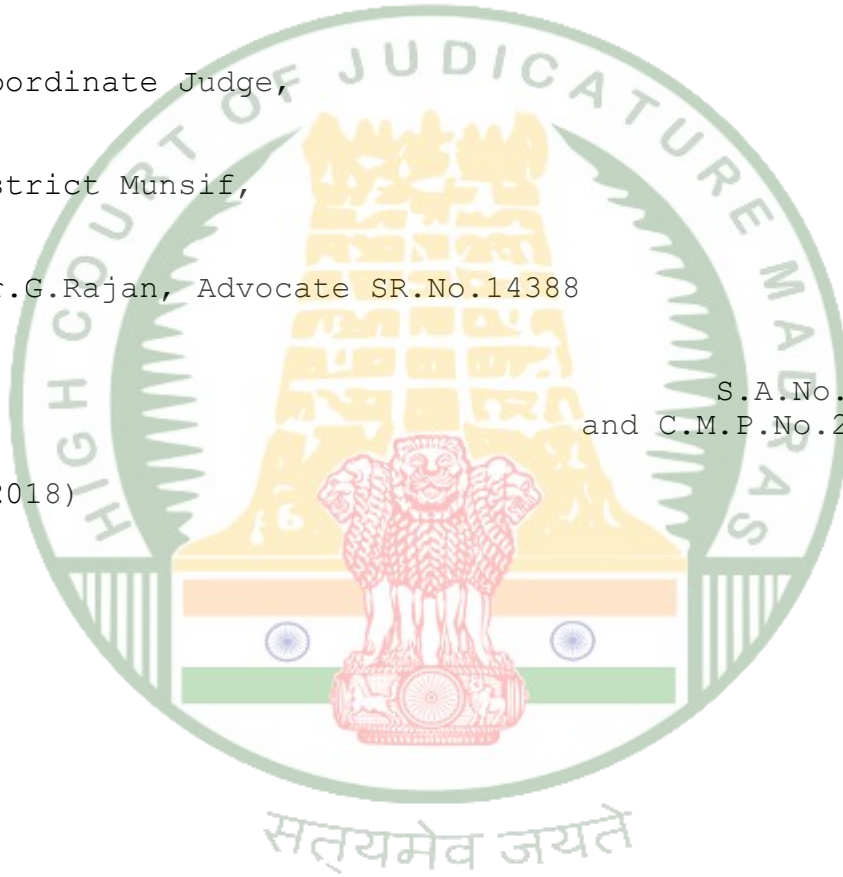
1. The Subordinate Judge,
Arni.

2. The District Munsif,
Arni.

+1cc to Mr.G.Rajan, Advocate SR.No.14388

CNR(CO)
GN(28/03/2018)

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