

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.216 of 2018
and C.M.P.No.5469 of 2018

1. Nachimuthu
2. Marayal .. Appellants/Defendant 3 and 4

Vs.

1. Sampooram ..1st respondent/plaintiff
2. Chenniappan
3. Muthusamy .. Respondents 2 and 3/
Defendants 1 and 2

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 07.10.2016 made in A.S.No.33 of 2015 on the file of the learned I Additional District Court, Erode confirming the judgment and decree dated 08.04.2015 made in O.S.No.3 of 2013 on the file of the learned Sub Court, Perundurai.

For Appellant : Mr.N.Manoharan

For Respondents 1 and 2 : Mr.M.Guruprasad

JUDGMENT

Aggrieved by the decree granted in favour of the plaintiff, the defendants 3 and 4 have preferred the above Second Appeal in a suit for partition.

2. A preliminary decree was passed declaring 1/6th share in the suit properties. The claim of the plaintiff is that she had purchased 1/6th share in the suit properties. The defendants 1 and 2 are entitled to 2-1/2 /6 share and the defendants 3 and 4 entitled to remaining 2-1/2 / 6 share. The fourth defendant had filed a suit in O.S.No.118 of 1999 on the file of the District Munsif, PeruNdurai, in which, the plaintiff and the defendants 1 and 2 were shown as defendants in the said suit. The said suit was dismissed on 28.09.2011 for partial partition and for non-joinder of necessary parties.

Similarly, the third defendant, who is the appellant herein, had filed O.S.No.127 of 2000 against the first defendant for permanent injunction basing her claim on the oral partition. As the oral partition could not be proved, that suit was dismissed and there is no appeal was filed against the same.

3. In the present suit, the contention of the appellants 3 and 4 is with respect to the same oral partition. When the appellants had specifically admitted the share of the plaintiff, the preliminary decree is passed only declaring their share in the property. Whether a particular survey number is in enjoyment of the appellants or they are having a long and continuous possession of the same, can be worked out in the final decree proceedings, wherein the partition by metes and bounds will be effected. Having admitted the share of the plaintiff, it is not open to the defendants 2 and 3 to challenge the decree. Hence, the Courts below have rightly dismissed the suit. In the absence of any question of law, much less substantial question of law arising for consideration out of the concurrent findings of the Courts below, no interference is warranted in this Second Appeal and the appeal deserves to be dismissed.

4. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

srn

To

1. The I Additional District Judge, Erode
2. The Sub Judge, Perundurai.
3. The Section Officer,
VR Section, High Court, Madras.(2 Copies)

+1cc to Mr.N.Manokaran, Advocate SR.No.22021
+1cc to Mr.M.Guruprasad, Advocate SR.No.22433

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BR(CO)
GN(08/05/2018)