

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2018

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

S.A.No.548 of 1997

M. Sundarambal

...Appellant (Defendant)

Vs

1. P.Soundararajan Chettiar
2. T.Murugaiyan Chettiar
3. V.Gnanasekaran Chettiar (Died)

... Respondents 1 to 3/(Plaintiff)

4. Sengamalathayal
5. Punithakumaran
6. Manimegalai
7. Manjula

RR4 to 7 brought on record as legal representatives of the deceased R3 vide order of court dated 02.06.2014 made in CMP.Nos.1125 to 1127 of 2011 in S.A.No.548 of 1997

...Respondents 4 to 7 /Lrs of 3rd Respondent (3rd Plaintiff)

Prayer: The Second Appeal is filed under Section 100 of CPC, against the judgment and decree of the Principal Subordinate Court, Nagapattinam in A.S.No.149 of 1996 dated 04.02.1997 confirming the judgment and decree of the District Munsif Court of Mannargudi, dated 30.09.1995 passed in O.S.No.79 of 1985.

For Appellant : Mr.M.Kempraj

For R1 : Died

For R2 : No appearance

For R3 : Died

For R4 to R7 : Not ready in notice

JUDGMENT

The defendant in O.S.No.79 of 1985 on the file of the District Munsif Court, Mannargudi, is the appellant herein. The said suit had been filed by the plaintiffs for declaration that

a pathway measuring 15 feet North to South and 45 feet East to West belongs to the plaintiffs and for mandatory injunction to remove the hut, put up by the defendants. By judgment and decree dated 30.09.1995, the learned District Munsif, Mannargudi, decreed the suit as prayed for.

2. In the course of the judgment, the learned District Munsif, found as a fact that the suit was maintainable and that there was a partition among the family in the year 1908 and that the plaintiffs had a right to seek declaration and also mandatory injunction to remove the hut.

3. The defendant then filed A.S.No.149 of 1996 which came up for consideration before the Principal Subordinate Court, Nagapattinam. By judgment and decree dated 04.12.1997, the learned Principal Subordinate Court, Nagapattinam, dismissed the first appeal. Challenging that judgment, the defendants have filed the present second appeal.

4. It has to be mentioned that the appeal has not yet been admitted. Pending the appeal, the third plaintiff who is third respondent in the appeal died and his legal representatives have been brought on record as respondents 4 to 7.

5. It is represented by the learned counsel for the appellant that the first and third respondents had sold the property to the second respondent who is in possession. It is also represented that after the judgment and decree of the Trial Court and the First Appellate Court, the appellant and the second respondent decided to settle the issues by themselves. The appellant had put up a pucca construction and the second respondent also had been provided with an alternate path way.

6. In view of these facts and also in view of the fact that no substantial questions of law arises for consideration, the second appeal is dismissed. It is represented that the first respondent had also died. However his legal representatives have not been brought on record. Additionally the appeal is also dismissed as abated against the first respondent.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-VI)

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Sub Assistant Registrar

smv

To

1. The Principal Subordinate Judge,
Nagapattinam

2. The District Munsif,
Mannargudi.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+lcc to Mr.Kempraj, Advocate, S.R.No. 86313

S.A.No.548 of 1997

SV(CO)
GN(08/02/2019)



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