

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.03.2018

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM

AND

THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

A.S.No.590 of 2016

1.Rajkumar
2.Rajkumari

... Appellants/Defendants 6 & 7

Vs

Rajam [died]

1.Rajasekaran
2.Kalavathy
3.Revathy
4.Govindan
5.Karunamoorthy

... Respondents/Plaintiffs 1 to 4

Rajendiran [died]

6.Krishnaraj
7.Rajeswari
8.Rani
9.Vijayalakshmi
10.Ezhilarasi
11.Balaji

... Respondents/Defendants 1 to 5 and
8 to 11

Appeal Suit filed under Section 96 of the Code of Civil Procedure, 1908 read with under Order 41 Rule 1 of the Code of Civil Procedure, 1908 against the judgment and decree dated 18.04.2016, passed by the Principal District Court, Puducherry, in O.S.No.72 of 2006.

For Appellants : Mr.M.Devaraj

For Respondents : Mr.S.Sudharshan for R1 & R2
: Mr.R.Jagadeesan for R5
for M/s.K.V.Subramanian Associates

RR 9 & 11 :Given up

RR 3,4,6,7,8 & 10 :No Appearance

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM., J.]

This Appeal Suit has been directed against the judgment and decree dated 18.04.2016 passed in Original Suit No.72 of 2006 by the Principal District Court, Puducherry.

2.The respondents 1 to 3 as plaintiffs, have instituted Original Suit No.72 of 2006 on the file of the trial Court, praying to pass a preliminary decree of partition, wherein, the present appellants are arrayed as defendants 6 and 7 and the remaining respondents are arrayed as defendants 1 to 5 and 8 to 11.

3.The material averments made in the plaint are that the first plaintiff is the wife of deceased Balasundaram. The remaining plaintiffs are their children. The suit properties are the joint family properties. Since the said Balasundaram has passed away, the plaintiffs are having partible interest in all the suit properties. Since the defendants are not amenable for having amicable partition, the present suit has been instituted, for getting the relief sought therein.

4.On the side of the defendants, no hot contest has been made. The trial Court, even without taking evidence, has decreed the suit only in respect of share of the plaintiffs. Further, the trial Court has given a finding to the effect that the defendants 6 and 7 are also entitled to get share along with the plaintiffs 2 to 4, if they establish that they are children of Balasundaram. Since such finding has been given by the trial Court, the present Appeal Suit has been preferred at the instance of the defendants 6 and 7, as appellants.

5.The learned counsel appearing for the appellants/defendants 6 and 7 has sparingly contended to the effect that the trial Court has not given sufficient opportunity to both parties, so as to establish their respective cases and even without getting evidence, the trial Court, has simply decreed the suit in respect of shares of the plaintiffs and further for the purpose of proving that the defendants 6 and 7 are also children of deceased Balasundaram, voluminous documents are available and since the trial Court has not given any opportunity, those documents have not been exhibited. Under such circumstances, the present Appeal Suit has been preferred and during pendency of the same, C.M.P.No.21617 of 2017 has been filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 along with certain vital documents and therefore, the

judgment and decree passed by the trial Court are liable to be set aside.

6.As rightly pointed out on the side of the appellants/defendants 6 and 7, in the trial Court, neither party has adduced even an oral evidence. In paragraph No.34[2] of the judgment passed by the trial Court, it is observed to the effect that the defendants 6 and 7 are also entitled to get share along with plaintiffs, provided they must establish that they are the children of deceased Balasundaram.

7.It is not an exaggeration to say that the trial Court has not given proper opportunity to either party so as to prove their respective contention. Since the trial Court has not given proper opportunity to both parties to establish their case, since along with C.M.P.No.21617 of 2017, so many vital documents have been filed and the same can be marked only through oral evidence, this Court is of the view that the judgment and decree passed by the trial Court are liable to be set aside and the matter is remitted to the file of the trial Court. Since the matter is liable to be remitted to the file of the trial Court, no order need be passed in C.M.P.No.21617 of 2017.

In fine, this Appeal Suit is allowed without costs. The judgment and decree passed in Original Suit No.72 of 2006 by the Principal District Court, Puducherry are set aside and Original Suit No.72 of 2006 is remitted to the file of the trial Court for deciding issue No.2. The court fee paid on the appeal memorandum is ordered to be remitted to the appellants/defendants 6 and 7 forthwith. The trial Court is directed to dispose of Original Suit No.72 of 2006 before the end of June 2018 and report the same to the Registry without fail.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
1.The Principal District Judge,
Puducherry.

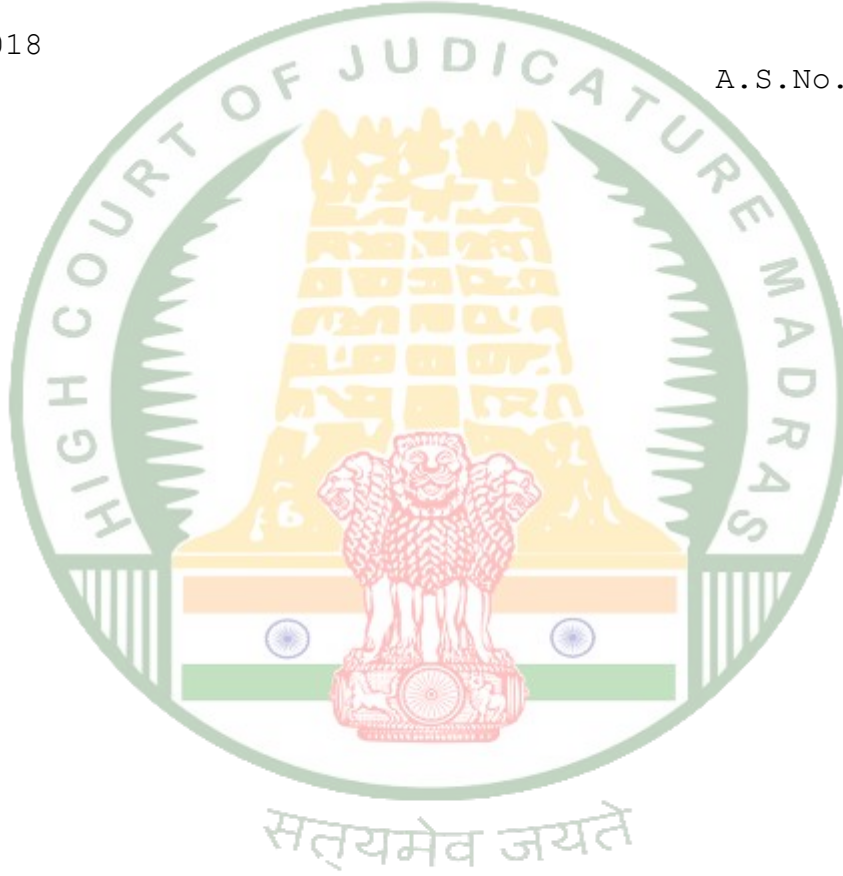
2.The Section Officer,
VR Section,
High Court, Madras (2 copies)

3.The Section Officer,
Judicial Section,
High Court, Madras

+2cc to Mr.K.V.Subramanian, Advocate Sr.No.17093 and 17095
+3cc to Mr.M.Devaraj, Advocate Sr.Nos.17164 and 17163

NMI (CO)
sm:28.3.2018

A.S.No.590 of 2016



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