

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

CORAM :

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.906 of 2017
and C.M.P.No.22809 of 2017

1. Adisivan
2. Rajendran
3. Sukumar

... Appellants/Defendants 1 to 3

Vs.

1. Rajeswari
2. Vimala
3. Thangammal

... Respondents/Plaintiff/Defendants 4 and 5

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.10.2012 made in A.S.No.13 of 2012 on the file of the learned Principal District Court, Namakkal, confirming the judgment and decree dated 25.01.2012 made in O.S.No.14 of 2009 on the file of the Sub Court, Namakkal.

For Appellant : Mr.N.Manokaran

J U D G M E N T

The defendants 1 to 3 are the appellants herein in a suit filed by the plaintiff for partition.

2. The fifth defendant is the mother, the defendants 1 to 3 are the sons and the fourth defendant and the plaintiff are the daughters of Perianna Gounder (father). Admittedly, the suit properties belonged to the father Periyanna Gounder, who died intestate in the year 1981. After his death, all the legal heirs are entitled to succeed to the suit properties. It is the only contention of the appellants that after the death of the father, the first defendant had taken up the family responsibility by educating the other siblings and also performed the marriage of the sisters. It is also stated that he had developed the properties, which was a punjai land and incurred expenses in a sum of Rs.15 lakhs. In support of their case, the defendants have also examined one Mallika as D.W.2, who is the mother-in-law of the first defendant, who has deposed that she had lent a sum of Rs.10 lakhs to the first

defendant. Though it is stated that she had obtained a promissory note and also issued receipts for payment of the interest, no document has been produced by the defendants to substantiate the same. As the only contention of the first defendant is that since he had expended money for development of the suit properties as well as for other expenditure, the liability has to be shared by the plaintiff. Even in the written statement, it is admitted by the first defendant that the plaintiff is entitled for her 1/6th share. However, it should be after sharing the liability. But, in the absence of any evidence to substantiate the contention of the first defendant that he had expended a sum of Rs.20 lakhs, the Courts below have rightly rejected his claim and decreed the suit as prayed for. As there is no infirmity in the findings of the Courts below and in the absence of any substantial question of law arising out of the said facts, this Court finds no reason to interfere with the same.

3. 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 VII)

//True copy//

Sub Assistant Registrar

srn

To

- 1.The Principal District Judge, Namakkal
- 2.The Sub Judge, Namakkal.

+1cc to Mr.N.Manokaran, Advocate SR.No.1078

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