

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018
CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI****S.A.No.607 of 1999**

Sengoda Gounder

... Appellant

Vs.

1.Superintending Engineer,
(Operation & Maintenance)
T.N.E.B., Erode.

2.Junior Engineer,
(Operation & Maintenance)
T.N.E.B., Nasiyanoor,
Perundurai Tk., Erode District.

3.Senniammal

4.Valliammal

5.Selvaraj

6.Minor Govindaraj

Rep.by Guardian & Mother Valliammal

..Respondents

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C. to set aside the Judgment and Decree dated 13.02.1997 made in A.S.No.47/1997 on the file of the Court of the Additional Subordinate Judge, Erode, confirming the Judgment and Decree dated 22.03.1996 made in O.S.No.19/1995 on the file of the court of the District Munsif's Perundurai.

For Appellant : Ms.G.Shabnam

for Mr.T.M.Navven

For RR1 & 2 : Mr.V. Viswanathan

Senior Counsel for TNEB

For RR4 : Died

For RR6 : Dismissed vide court order
dated 04.12.2009

J U D G M E N T

The appellant/plaintiff, who lost the case before the lower court filed the present second appeal.

2. The case of the plaintiff is as follows:

The sum and substance of the plaint is that the suit schedule property is the ancestral property which comprises of total extent of 1.48 acres situated in SR.No.17. In the year 1958, the first defendant, his elder brother and their mother filed a suit for partition in O.S.No.349/1958 on the file of the District Munsif Court, Erode. Accordingly, preliminary decree was granted. Thereafter, Judgment was passed on 12.07.1963 and thereafter, final decree was passed in the said partition suit and the appellant/plaintiff was allotted 'B' plot which is 63 cents and first defendant and his brother were allotted 'A' plot which is 68 cents. Both plots are situated in SR.No.17 and left the space of 11 cents as Well and 6 cents as passage to reach the Well. However, based on the registered partition deed dated 02.08.1980 between first defendant and his brother, 'A' plot was allotted to the first defendant and 'B' plot was allotted to the plaintiff. Accordingly, the first defendant was impleaded as one of the defendants in the present suit. Accordingly, the appellant/plaintiff filed the suit for declaration declaring that the 63 cents and 6 cents belongs to the plaintiff and for recovery of possession in SR.No.17 and directing the morefully described in the 'A' schedule property and directing the first defendant to deliver the possession

of 6 cents to the plaintiff, failing which, the Commissioner to be appointed and mark the boundary and schedule and deliver to the plaintiff and further grant preliminary decree directing the first defendant to divide the 11 cents left common for Well and 6 cents left for cartrack into equal halves and for plaintiff, a half share and one such share in SR.No.17, failing which, the Commissioner should be appointed and deliver the same and granting a mandatory injunction against the defendants 1 to 3 directing to remove all obstructions in a pathway challenged.

3. The written statement filed by the sixth defendant which was adopted by the defendants 4,5 & 7 are as follows:

The suit is not maintainable since the suit schedule property was already covered by a final decree in O.S.No.349/1958. As per the final decree, it is binding on the parties and whatever allotted in common usage, it can be used for common purpose which cannot be set aside for the area allotted to the plaintiff for exclusive possession and the final decree passed in the above said suit is binding on the parties.

4. Considering the documents filed by the appellant/plaintiff as well as the defendants, the lower court dismissed the suit. Aggrieved by the same, the appellant/plaintiff has preferred an appeal before the lower appellate court in A.S.No.47/1997. The appellate court confirmed the dismissal order passed by the lower court, against which, the present second appeal is filed.

5. Learned counsel appearing for the appellant/plaintiff submitted that while admitting the appeal, no question of law was framed. The only point arises for consideration in the second appeal is though there was a final decree, exclusive partition is maintainable.

6. The plaintiff, being a co-owner is entitled to claim partition. Accordingly, the appellant/plaintiff filed a suit for declaration and other reliefs. The lower court as well as the lower appellate court had erroneously dismissed the suit. The plaintiff is entitled to the partition in the common area which was allotted in the earlier suit.

7. No one represented on behalf of the respondents. However, learned counsel appearing on behalf of the Electricity Board would submit that the respondents are ready to abide by any order passed by this court.

8. The appellant/plaintiff lost the case before the courts below. No substantial question of law arise for consideration before this court.

9. On perusal of the entire records, the lower court as well as the lower appellate court dismissed the appellant's case on the ground that already there was a final decree in the year 1958 in O.S.No.19/1995. Based on the final decree, the appellant/plaintiff as well as defendants have enjoyed the property including the common well and common passage. After a lapse

of several years, the appellant/plaintiff has no right to set aside the earlier decree passed by the competent court.

In view of the above, I do not find any substantial question of law will arise for consideration. The second appeal fails and accordingly the same is dismissed. No costs.

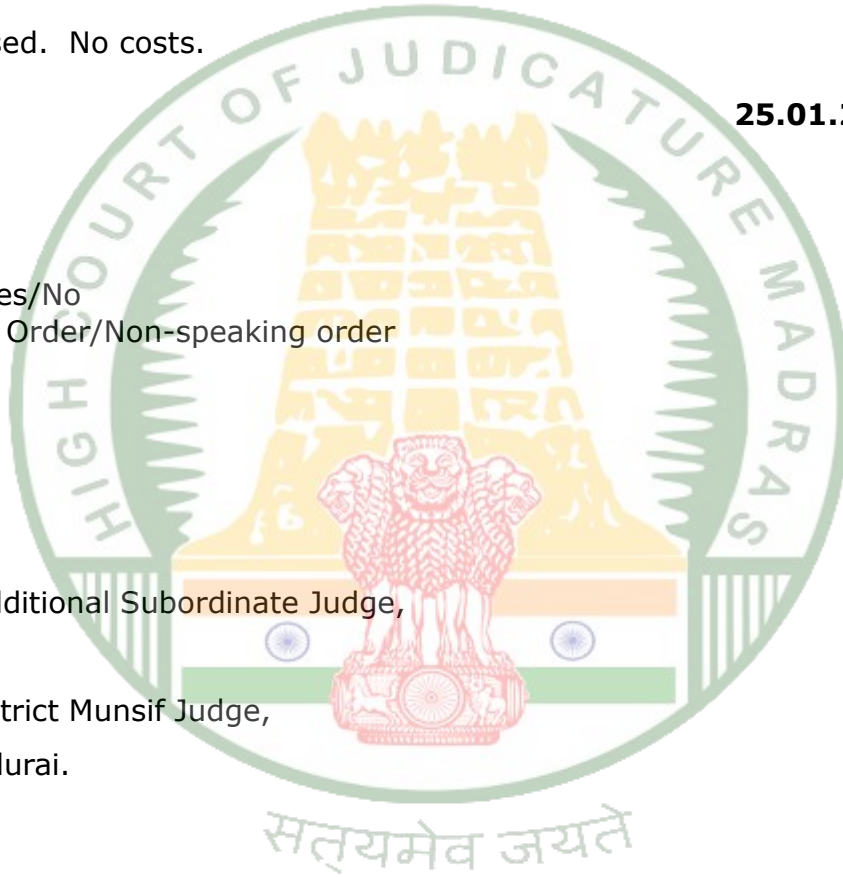
25.01.2018

Gv

Index : Yes/No
Speaking Order/Non-speaking order

To

1. The Additional Subordinate Judge,
Erode.
2. The District Munsif Judge,
Perundurai.



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M.DHANDAPANI, J.

gv



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