

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.12.2018

Coram:

The Hon'ble Mr. Justice N.SATHISHKUMAR

S.A.No.281 of 2012 and
M.P.No.1 of 2012

1. Periyasamy

2. Dhanapal

3. Kasinathan

4. Gurusamy Appellants/Appellants/Defendants

Versus

1. Sengamuthu

2. Thailammal Respondents/Respondents/Plaintiffs

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree dated 11.11.2010 made in A.S.No.107 of 2008 on the file of the Additional District Judge (Fast Track Court), Ariyalur, confirming the Judgment and Decree dated 23.12.2004 made in O.S.No.226 of 2003 on the file of the Additional District Munsif, Ariyalur.

For Appellants : Mr. M.V. Krishnan

For Respondents : No appearance.

JUDGMENT

This Second Appeal has been filed against the decree and judgment of the First Appellate Court confirming the Judgment and Decree of the trial Court.

2. The facts lead to file this Second Appeal is as follows:

The First Plaintiff and First Defendant are brothers. The Second, Third and Fourth Defendants are the sons of the First Defendant. The Second Plaintiff is the wife of First Plaintiff. It is the case of the Plaintiffs that the suit property has been divided between two brothers and the division had taken place 25 years back when their father was alive. After their father died, they enjoyed the property. Though the division was not according to the metes and bounds, it took place based on the enjoyment of the suit property without measurement, shown as

'ABCD'. When that being so, in the month of June 2003 the Defendants removed the curve in the bund and straightened the bund, thereby make it to appear as if the properties are cultivated. Due to such activity, the Plaintiffs are in short of more than 15 cents which is the suit property herein. Hence, the plaintiffs filed suit for Declaration and for Mandatory Injunction.

3. It is the contention of the Learned counsel for the Respondent that though it is admitted that there are oral partition, the Southern portion was allotted to the Plaintiffs and the northern portion was allotted to the Defendant. Hence prayed for the dismissal of the suit.

4. The trial Court has framed the following issues:

1. Whether the suit property was already in possession and enjoyment of the Plaintiff? and whether the Defendants are encroached the entire suit property?
2. As there any " तुयò " in the suit property as stated by the Plaintiff?
3. Whether the Plaintiffs are entitled to get his relief as he prayed fin the plaint.
4. To what relief ?

5. Before the trial Court, On the side of the Plaintiff, two witnesses were examined and 6 exhibits were marked. On the side of the Defendant, 2 witnesses were examined. 2 documents were marked as Ex.C.1 and Ex.C.2. The Trial Court taking into consideration of the nature of the properties and the enjoyment of the properties by the Plaintiffs and the Defendants and also the evidence of P.W.1, decreed the suit in respect of ABEF properties shown in the Commissioner Report Ex.C.2 and granted declaration. In respect of the other reliefs, the suit was dismissed. The Appellate Court also confirmed the decree and judgment of the trial Court, against which the present Second Appeal came to be filed by the Plaintiff.

6. The learned counsel for the appellants submitted that both courts took note of the evidence and also the Commissioner Report had granted limited decree and the parties are now enjoying the properties without any problem. Hence left the matter for disposal by the Court.

7. On perusal of both Court's Decree and Judgements, the trial court and First Appellate Court in fact considered the pleadings of both sides and also took note of the fact that the properties have already been partitioned between the parties and passed such limited decree based on the admissions of the

respective parties in their respective evidence. Therefore, considered the respective pleadings, this Court does not find any substantial question of law and in view of the same the appeal is dismissed. No costs. Consequently connected M.P.is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ggs.

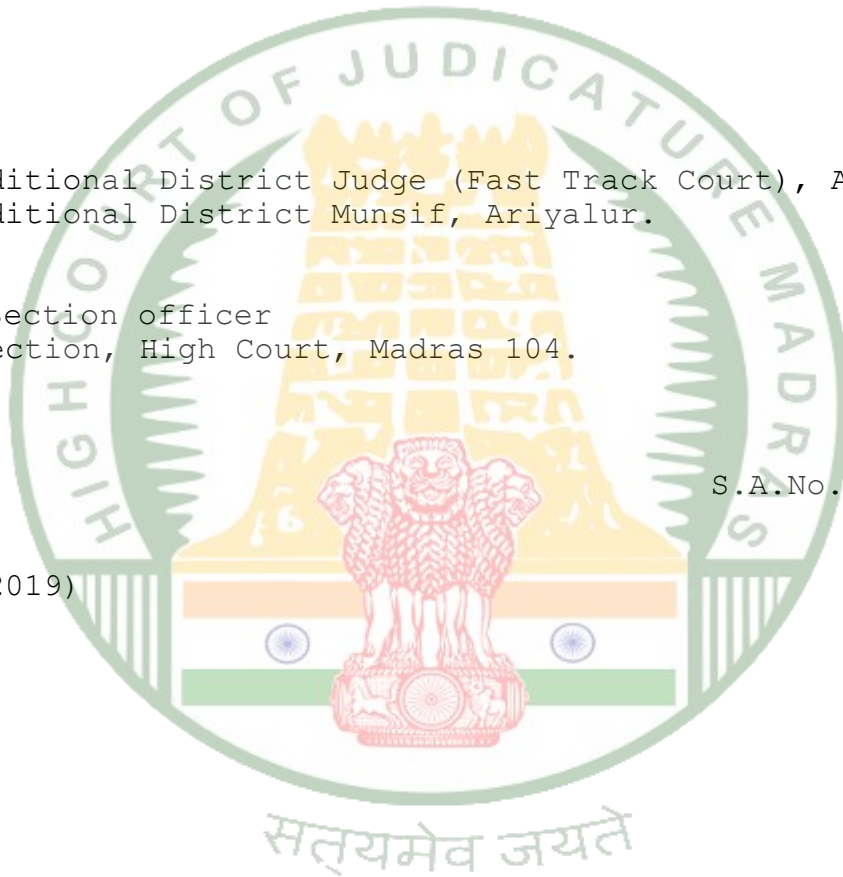
To:

1. The Additional District Judge (Fast Track Court), Ariyalur.
2. The Additional District Munsif, Ariyalur.

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The Section officer
VR Section, High Court, Madras 104.

S.A.No.281 of 2012

EV(CO)
SP(28/03/2019)



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