

IN THE HIGH COURT OF JUDICATURE AT MADRAS

08.06.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A. No.1710 of 2009
and
MP No.1 of 2009

1.Rukmani Ammal (Died)
2.Kasi Ammal
3.Saradha Ammal
4.Devaki Ammal
5.Manimekalai
6.Valarmathi
7.P.Radhakrishnan ... Appellants/Respondents/
Defendants
Appellants 6 and 7 brought on record as LR's of the
deceased 1st Appellant Viz., Rukmani Ammal,
vide Court order dated 30.09.2016 made in
CMP No.14533 of 2016 in CMA No.1710/2009

Versus

Adimoolam ... Respondent/ Appellant/
Plaintiff

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1
C.P.C., as against the Judgment and decree made in A.S. No.62 of
2005, dated 20.09.2007 on the file of Subordinate Court, Gingee,
remanding the appeal to the trial Court by setting aside the
judgment and decree made in O.S. No.578 of 1990, dated
14.11.2003 on the file of District Munsif, Gingee.

For Appellants : Ms. K. Jenitha

For Respondent : Mr.P.B. Balaji

JUDGMENT

This appeal has been filed as against the Judgment and
decree made in A.S. No.62 of 2005, dated 20.09.2007 on the file
of Subordinate Court, Gingee, remanding the appeal to the trial
Court by setting aside the judgment and decree made in O.S.
No.578 of 1990, dated 14.11.2003 on the file of District Munsif,
Gingee.

2. Heard both sides.

3. The plaintiff / respondent herein filed the suit for the relief of declaration to declare that the suit property belongs to him and for consequential injunction restraining the defendants / appellants from entering into the property and to disturb his peaceful possession and enjoyment of the same.

4. The trial Court after analysing the evidence and documents placed by both the plaintiff and defendants has given a finding that the partition said to have been effected in the year 1977 was not proved by respondent / plaintiff. Hence, the suit filed by the plaintiff was dismissed.

5. It was also observed from the decree and judgment the said partition deed dated 20.01.1987 relied on by the respondent / plaintiff was an unregistered one.

6. Aggrieved over the same, the plaintiff /respondent preferred the appeal in A.S. No.62 of 2005 reiterating that the partition taken place in the year 1977. During the pendency of the appeal, I.A. No.50 of 2005 was filed by the plaintiff to mark the unregistered partition deed, dated 20.01.87 to prove the factum of partition.

7. The only issue to be decided in this case is whether the plaintiff has obtained the property by way of partition. The said unregistered partition deed was sent for determining the stamp duty. In spite of several reminders, the document was not produced before the trial Court. Hence, the trial Court dismissed the suit by way of dismissal. When the case came before the first appellate court, once again the plaintiff filed the petition to receive the document. So, the appellate Court was of the opinion that without analysing and clarifying with regard to the unregistered partition deed, the suit could not have been dismissed. Hence, the case was remanded to the trial Court by the first appellate Court.

8. Before this forum, both learned counsel argued the matter stating that filing the unregistered partition deed before the appellate court is well found and remanding the matter before the trial Court, once again for the purpose of verifying the genuineness of the unregistered partition deed, will prolong the case for years together and the appellate Court itself can assess the document, which is produced before the first appellate Court. The appellate Court itself can decide the issue instead of remanding the same to the trial Court. Hence, in the interest of justice and the fact that the trial Court dismissed the suit only due to non production of the partition

deed and the same is now produced, accordingly, the appellate Court itself can decide the issue within a period of six months from the date of receipt of copy of the order. The plaintiff respondent also undertakes to comply with the payment of stamp duty for the purpose of registering the document. The appellate Court can appropriately deal with the case and give a disposal.

9. Both the appellants and the respondent are directed to co-operate with the appellate Court for early disposal of the case within a time frame without seeking any adjournments or prolonging the case.

10. Having regard to the fact that even this appeal is pending before this Forum for a considerable length of time, this Court is inclined to impose cost, while allowing the appeal. Accordingly, the appellants / defendants are directed to pay costs of Rs.1000/- on each petitions to the Tamil Nadu State Legal Services Authority, High Court, Chennai, within a week and produce receipt of payments. Accordingly, the Civil Miscellaneous Appeal is allowed by setting aside the Judgment and decree of the Appellate Court. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs12

To

1. The Subordinate Court, Gingee.

2. The District Munsif, Gingee.

Copy To:

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

+1 cc to M/s.A.Malath Devapriyam, Advocate Sr.No.35753

+1 cc to M/s.P.r.Ramanujam, Advocate Sr.No.35744

CMA No.1710 of 2009

KGK (CO)
CSL/18.02.2019