

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.623 of 2018

and

C.M.P.No.19011 of 2018

1.Mr.D.Bhavanikumaran

2.Mrs.D.Devi

...Appellants/Plaintiffs

Versus

1.The Collector of Vellore District,
Collector Office,
Sathuvachari,
Vellore.

2.The Revenue Divisional Officer,
R.D.O. Office,
Ranipet.

3.The Tahsildar,
Taluk Office,
Arcot,
Vellore District.

4.Mrs.K.Shanmugavalli

...Respondents/Defendants

This Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 28.02.2018 made in A.S.No.34 of 2013 on the file of Subordinate Judge, Ranipet confirming the judgment and decree dated 25.09.2013 made in O.S.No.64 of 2009 on the file of the District Munsif Court, Ranipet, Vellore District.

For Appellants : Mr.R.Bharath Kumar

J U D G M E N T

The suit is filed by the appellants for a declaration of their right, title and interest to the suit properties and for a permanent injunction restraining the defendants 1 to 3 from changing the Revenue Records in the name of the fourth defendant. The fourth defendant is none other than the wife of plaintiffs' deceased elder brother Muthu.

2. The facts in brief necessary for the disposal of this Second Appeal at the admission stage are as follows:

The plaintiffs are the appellants before this Court. The suit properties belonged to one Pachaiyappa Naicker, the maternal grand father of the plaintiffs and one Muthu, the husband of the fourth defendant. On 06.06.1996, there was a partition between the Pachaiyappa Naicker, Muthu and the plaintiffs. In that Partition Deed, the 'B' Schedule property was allotted to Muthu. The 16th item was allotted to Pachaiyappa Naciker which is described as the 'A' Schedule property.

Plaintiffs' case:

3. It was the case of the plaintiffs that there was a registered partition between them, Muthu and Pachaiyappa Naicker on 06.06.1996. However, the same was not acted upon and the parties continue in joint enjoyment and possession of the suit properties. The further case of the plaintiffs is that the fourth defendant who was the wife of their brother Muthu was living in adultery and that she had got into a relationship with one Chandrasekharan whom she had married even during the lifetime of her husband Muthu. Therefore, it was the contention of the plaintiffs that the fourth defendant was not entitled to any share in the suit properties. While so, since fourth defendant was attempting to change the Revenue Records for the suit properties by submitting the petition before the defendants 1 to 3 the plaintiffs had issued a legal notice to the defendants 1 to 3. Thereafter, the plaintiffs had filed a suit in O.S.No.64 of 2009 for declaration and injunction restraining the defendants 1 to 3 from changing the revenue records in the name of the fourth defendant.

Defendant's case:

4. The fourth defendant had filed a written statement inter alia contending that the aforesaid Partition Deed was acted upon and the said Muthu was in enjoyment of his separate property. She denied the allegations of adultery and she would contend that her husband Muthu had died on 23.01.2007 and she had remarried Chandrasekharan only on 04.12.2008. Therefore, she would contend that the suit is frivolous one and liable to be set aside.

Trial Court & Appellate Court:

5. By judgment and decree dated 25.09.2013, the learned District Munsif, Ranipet had dismissed the suit O.S.No.64 of 2009 filed by the plaintiffs/appellants against which the plaintiffs/appellants have filed A.S.No.34 of 2013 on the file of the Subordinate Court, Ranipet. The learned Subordinate Judge, Ranipet had also confirmed the finding of the trial Court and dismissed the First Appeal. Aggrieved over which the plaintiffs/appellants are before this Court.

6. Heard Mr.R.Bharath Kumar, learned counsel for appellants.

7.1. A perusal of the judgment and decree of the Courts below would clearly indicate that the entire case of the plaintiffs would rest on the fact that the fourth defendant was living in adultery and had contracted her second marriage with one Chandrasekharan during the lifetime of her late husband Muthu and therefore, she was dis-entitled to any share in the suit property. However, the Courts below have considered the evidence and had come to the conclusion that the fourth defendant had remarried the said Chandrasekharan nearly two years after the demise of her husband. The Appellate Court has in very great detail stated how the Partition Deed dated 06.06.1996, had been acted upon by all the parties. The children have also been born to the fourth defendant and the said Chandrasekharan only after their marriage and therefore, there was no question of the fourth defendant living in adultery even during the lifetime of her late husband Muthu.

7.2. The Courts below have held that the fourth defendant's right to succeed to her husband's property opened on the date of the death of her husband, Muthu and on that date the fourth defendant was a widow, only thereafter, she had contracted the second marriage. Therefore, the judgment and decree of the Courts below are very much in order and the appellants have not raised any substantial questions of law warranting the interference by this Court.

8. In the result, this Second Appeal shall stand dismissed and the judgment and decree passed by the Courts below is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Ranipet.

2.The District Munsif Court,
Ranipet,
Vellore District.

3.The Collector of Vellore District,
Collector Office,
Sathuvachari,
Vellore.

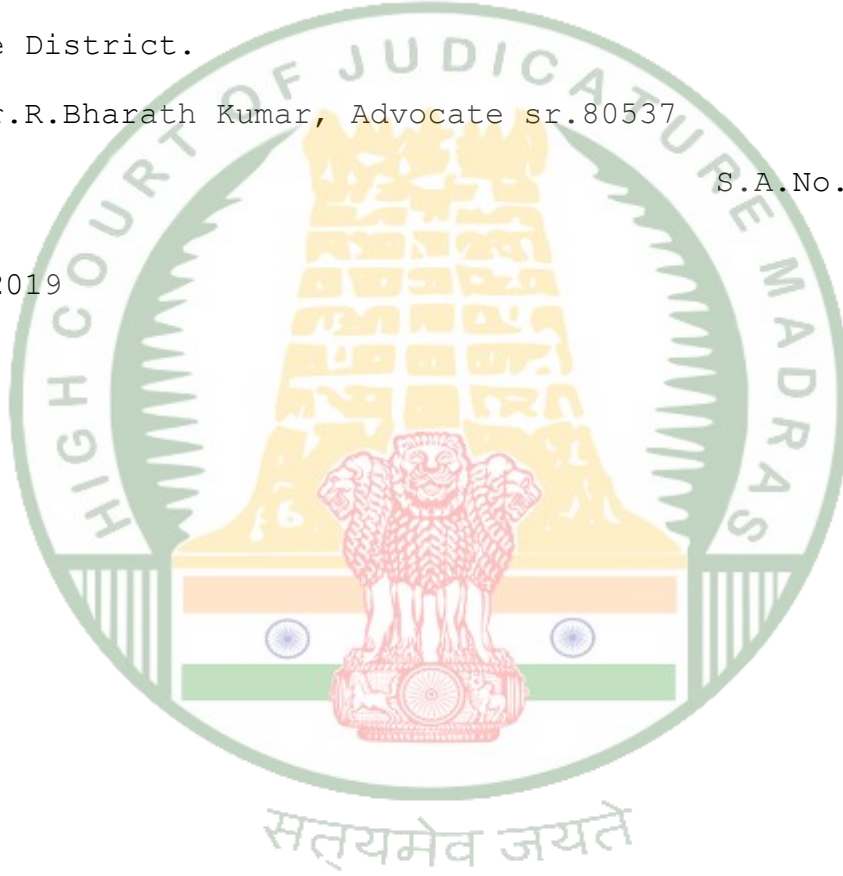
4.The Revenue Divisional Officer,
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5.The Tahsildar,
Taluk Office,
Arcot,
Vellore District.

+1cc to Mr.R.Bharath Kumar, Advocate sr.80537

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nr 10/10/2019



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