

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

S.A.No.613 of 2018

Murugan (died)

1.Thangam

2. Kumaresan

...Appellants/Appellants 2& 3/
Legal heirs of Plaintiff

-Vs-

Dhanapal (died)

1.Manimekalai

2.Sekhar

3.Revathy

4.The Joint Registrar - II
Office at Registrars Office Thiruppapuliyur
Cuddalore-2

Ranjitham (died)
w/o late Dhanapal

5.Chokkalingam

...2 to 5&7th defendants/2 to5 & 7th Respondents
1 to 5 Respondents

6.Ranjini

...Legal heirs of plaintiff/4thAppellant/
6th respondent

Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Decree and Judgment in A.S.No.40 of 2014 dated 29.06.2018 on the file of the Principal District Court, Cuddalore confirming the Decree and Judgment in O.S.No.109 of 2007 dated 19.08.2013 on the file of the II Additional Sub Court Cuddalore.

For Appellant : Mr.C.Munusamy

For Respondents: No Appearance

J U D G M E N T

The appellant has preferred O.S.No.109 of 2007 on the file of the II Additional Sub Court, Cuddalore, seeking following reliefs:

1. To pass a preliminary decree for partition and separate possessions of the plaintiffs 1/5th share in the under mentioned suit properties.

2. To appoint a commissioner to divide the suit properties in terms of the preliminary decree and pass a final decree under order 20 Rule 12 and order 26 Rule 13 of the code of civil procedure.

3. To pass a decree of permanent injunction restraining the 1 to 4 defendant from alienating or encumbering the under mentioned properties to any other persons.

4. To pass a decree of permanent injunction restraining the 5th defendant from registering any document or recording any encumbrance in respect of the under mentioned properties,

5. To direct the 1 to 4 defendants to pay the costs of the suit to the plaintiff.

2. It is his case that the property which had been purchase by the first defendant now deceased father of the plaintiffs and defendants 2 to 4 had been effected through joint family nucleus and a such the first defendant had no right to deal with the same as self acquired property.

3. It is the case of the defendants 2 to 4 that their father had effected settlement deeds in their favour in the year 2005, the same had been acted upon and thus the deeds of cancellation of such settlement deeds were of no force. Seventh defendant contended that the properties were the self acquired property of the first defendant and which stood settled in favour of the defendants 2 to 4 under settlement deed dated 21.02.2005 and he had purchased suit properties items 1 to 8 in 2007 and further by way of abundant caution they had included the first defendant as a party to the settlement deeds in their favour since he had

chosen to execute cancellation deeds which in any event were of no effect. In holding in favour of the defendants the Court below has found as follows:

"....

19. There is no iota evidence to show as to when the properties of the 1st defendant's father was sold, what was the sale price and what was the income derived from these properties before sale. So also there is no evidence as to the properties possessed by the 1st defendant's mother Sundarambal and the premium received by selling those properties. The witnesses P.W.2 to P.W.4 examined on the side of the plaintiff did not depose anything in this aspect.

20. Majority of the properties covered under items 1 to 9 of the suit properties are agricultural holdings of considerable extent. Hence it is difficult to comprehend that the suit properties were purchased out of the sale proceeds secured by selling the properties of Muthusamy and Sundarambal, parents of the 1st defendant and grandfather and grandmother of the plaintiff and defendants 2 to 4. "

Court below has found that the properties admittedly had stood in the name of the first defendant/ father of the plaintiff and hence the burden was on the plaintiff to prove joint family nucleus which plaintiff had failed to do. Except the oral evidence of plaintiff that the first defendant by selling the properties of his parents purchased suit items 1 to 9 in his name there was nothing on record to establish joint family nucleus and utilization thereof towards purchase by the first defendant.

4. Lower appellate court found applicable Sec.8 of the Hindu Succession Act as the plaintiff had failed to prove that there had been a partition between his father the first defendant and his brother as alleged.

5. Court below has also taken into consideration a mortgage executed and discharged by the first defendant as independent owner of the property.

6. Finding no merits nor any substantial question of law arising for consideration, the second appeal shall stand

dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

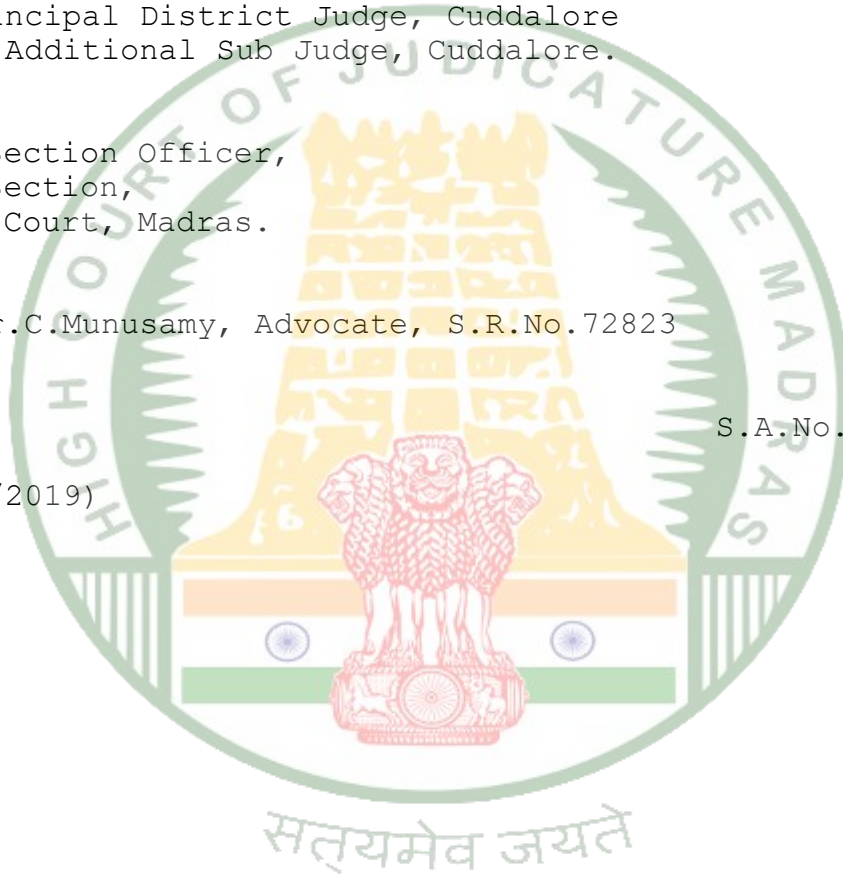
1. The Principal District Judge, Cuddalore
2. The II Additional Sub Judge, Cuddalore.

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

+1cc to Mr.C.Munusamy, Advocate, S.R.No.72823

S.A.No.613 of 2018

RJI (CO)
KAK(07/02/2019)



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