



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2018

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**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

S.A.(MD)No.207 of 2017 and  
C.M.P.(MD)No.4112 of 2017

1. Vaigundalakshmi Ammal
2. Arumugaperumal
3. Sethuramalingam

... Appellants/Appellants/  
Defendants 1 to 3

Vs.

1. Murugan
2. Meenakshi
3. Kailasam
4. Arunachalam

... Respondents/Respondents/  
Plaintiffs 1 to 3  
... Respondent/Respondent/  
4<sup>th</sup> Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C., to call for records pertaining to A.S.No.105 of 2008 on the file of the learned II Additional District and Sessions Judge, Tuticorin, dated 24.08.2016, which confirms the Decree and Judgment in O.S.No.67 of 2007 on the file of the learned Principal District Munsif, Srivaikundam, dated 05.09.2008 and to set aside the same by allowing this Appeal.

For Appellants : Mr.S.Muthalraj

For Respondents : Mr.S.Ramesh @ Ramaiah

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### JUDGMENT

This Second Appeal is filed against the Judgment and Decree passed by the learned II Additional District and Sessions Judge, Tuticorin, in A.S.No.105 of 2008, dated 24.08.2016, confirming the Decree and Judgment in O.S.No.67 of 2007, dated 05.09.2008, passed by the learned Principal District Munsif, Srivaikundam,

2. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

3. The substantial questions of law that were raised in this Second Appeal are as follows:-

" (1) Whether the Courts below are correct in granting Decree and Judgment in favour of the plaintiffs and fourth defendant?



(2) Whether without any documentary evidence to prove the title of property the Decree and Judgment of the Court below is valid in law?

(3) Whether partition is valid in law between third party or non-blood relations? "

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4. The defendants are the appellants in this case. Respondents 1 to 3 filed a Suit in O.S.No.67 of 2007 on the file of the learned Principal District Munsif, Srivaikundam, for declaration of title and for consequential injunction restraining the defendants from disturbing their possession of the suit property.

5. The plaintiffs claim title on the basis that they are their ancestral properties allotted to the grandfather of plaintiffs 1 and 3. Though the relationship of the plaintiffs' grandfather Sudalayandi and one Arunachalam, father of the first defendant is specifically stated in the plaint, it is specifically denied in the written statement. The legal heirs of the said Arunachalam executed two Sale Deeds, dated 12.11.1999 in favour of defendants 2 and 3 respectively in respect of the properties on the eastern side of the suit properties allotted to the said Arunachalam. However, it is the case of plaintiffs that taking advantage of certain objectionable entries in the revenue records, the defendants have started claiming some rights and that the plaintiffs were therefore constrained to file the Suit.

6. The Courts below have concurrently held that the plaintiffs have established the relationship between the parties. From the boundary description shown in the documents executed by the first defendant and other legal heirs of Arunachalam, the defendants have admitted the title of the plaintiffs' predecessors in interest. From the documents and applying the doctrine of estoppel, the Courts below have accepted the case of the plaintiffs. From the genealogy, it can be seen that the said Sudalayandi and Arunachalam are brothers. The Courts below have considered the pleadings and evidence in a proper perspective and the findings of the Courts below are based on reasons which are convincing and well-founded. This Court is not in a position to find any question of law that arise for consideration. The learned counsel for the appellants has not substantiated any of the questions of law which are raised in this Second Appeal.

7. The questions of law raised by the appellants in this case are factual and cannot be treated as pure questions of law so as to entertain this Second Appeal filed under Section 100 of Civil Procedure Code.

8. Hence, the Second Appeal is dismissed and the Judgment and Decree passed by the learned II Additional District and Sessions



Judge, Tuticorin, in A.S.No.105 of 2008, dated 24.08.2016, is confirmed. However, no order as to costs. Consequently, connected Miscellaneous petition is closed.

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Sd/-  
Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The II Additional District and Sessions Judge,  
Tuticorin.
2. The Principal District Munsif,  
Srivaikundam.
3. The Record Keeper, V.R.Section, ( 2copies)  
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.S.Muthalraj, Advocate, SR.No.44481

+One cc to Mr.S.Ramesh @ Ramiah, Advocate, SR.No.44507

pmu  
RL/7C/3P/CVC/SAR2/1/3/2018

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