



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.609 of 1998

WEB COPY

1. Kaliappa Chettiar (Died)
2. Nallammal
3. Santhamani
4. Saraswathi
5. Kaliammal
6. Bagyalakshmi
7. Arumugam
8. Palanisamy

(Appellants 2 to 8 brought on record
as LRs of the deceased sole appellant
vide order dated 18.06.2019 made in
CMP.Nos.1111 to 1113 of 2011) ...Appellants/Respondents/Plaintiff
LRs of the deceased Sole
Plaintiff

-Vs-

1. Palani Chettiar
 2. Ramaswamy
- ... Respondents/Appellants/
Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree in A.S.No.138 of 1995 dated 08.09.1997 passed by the I Additional District Judge, cum Chief Judicial Magistrate Coimbatore preferred against the decree and Judgment in OS.No.2284/89, dated 27/06/1994 on the file of I Additional District Munsif Coimbatore.

For Appellants : Mr.R.Venkatesulu
for Mrs.Usha Raman

For Respondents: Mr.K.Mayilsamy

JUDGMENT

The second appeal has been filed as against the judgment and decree in A.S.No.138/1995 dated 08.09.1997 on the file of the learned I Additional District Judge, Coimbatore, thereby reversing the judgment and decree passed in O.S.No.2284/1989 on the file of the learned I Additional District Munsif, Coimbatore.



2. The learned counsel for the appellants submitted that the deceased appellant and the respondents are brothers. The plaintiff filed a suit for declaration and permanent injunction in respect of the suit schedule property, that was decreed in favour of the plaintiff. But, the I Appellate Court reversed the said finding and dismissed the suit filed by the plaintiff. Aggrieved by the same, the present second appeal has been preferred by the plaintiff. Pending the second appeal, the defendants filed a suit for partition in O.S.No.947/2014, pending before the learned Principal Subordinate Judge, Coimbatore. Therefore, the learned counsel for the appellants sought permission of this Court to withdraw the present second appeal, with liberty to file a fresh suit, if necessary, under Order 23 Rule 3 of CPC.

3. The learned counsel for the respondents submitted that once the plaintiff filed a suit for declaration and permanent injunction in respect of the suit schedule property, he cannot be permitted to file a fresh suit against the suit for partition, which is said to be pending in O.S.No.947/2014 before the learned Principal Subordinate Judge, Coimbatore.

4. Considering the rival submissions made by the parties and the endorsement made by the learned counsel for the appellants and also the fact that the records are not available, the present second appeal is dismissed as withdrawn, with liberty to file a fresh suit as contemplated under Order 23 Rule 3 of CPC. No Costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

hvk

To
1.The I Additional District Judge,
Coimbatore

2.The I Additional District Munsif
Coimbatore



+1 cc to Ms.Usha Raman Advocate sr102942
+1 cc to Mr.K.Myilsamy Advocate sr103177

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gj (co)
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