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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1008 of 2002

Najibunnissa

..Appellant/Appellant/
9th Defendant

...Versus...

1.Thulasi Ammal
2.Manvizhi
3.Thayyalnayaki
4.Theivasigamani
5.Anbalagan
6.Venkatesan
7.Srinivasan
8.Anbarasi
9.Minor Sudarvizhi
10.Minor Manikandan
11.Minor Kalaivani

(Minor respondents 9 to 11

are represented by their

mother and guardian R8-Anbarasi)...Respondents4 to 11/

12.Sub-Registrar, Respondents 4 to 11/defendants1 to 8
Mayiladuthurai

(since respondent 4 to 11 remained

exparte in the Courts below, notice

may be dispensed with for) ..12th Respondent/12th Respondent/
10th Defendant

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.24 of 2001 dated 01.10.2001 on the file of the Principal District Judge, Nagapattinam in confirming the judgment and decree made in O.S.No.183 of 1999 dated 21.12.2000 on the file of the Court of Principal Subordinate Judge, Mayiladuthurai.

For Appellant :: Mr.A.Muthukumar

For R1toR3 :: No appearance

For R4 to R11 :: Notice dispensed with

For R12 :: Given up



Heard the learned counsel for the appellant and perused the materials available on record.

3. The said suit was filed by the daughters of the deceased Chinnadurai against her mother, brother and also another brother Ranganathan's legal heirs, for partial partition in respect of 4th Item of the properties.

5. The above Second Appeal has been admitted on 20.06.2002 on the following Substantial Questions of Law.

ii) Whether the present suit is maintainable in law when the earlier suit O.S.No.222 of 1992 for similar relief was dismissed?

7. After going through the evidence of P.W.1, through which it is clearly elicited in the cross-examination that the Trial Court suit in O.S.No.222 of 1992 was dismissed for default for non-service of summons and hence, Section 11 of the C.P.C is not attracted and hence, the first substantial question of law does not arise for consideration.



8. On the second substantial question of law, though P.W.1 in the cross-examination, at the initial portion, there are some other property other than the suit properties. However, in the end of the cross-examination, she had categorically stated that except the 4 properties which are shown in the schedule to the plaint, no other property is available and both the Courts below, on proper appreciation of evidence on record, has rendered concurrent finding that no other properties are available and hence, negatived the defence taken by the 9th defendant in the suit that the suit is bad for partial partition.

9. After going through the evidence and also the documentary evidence filed before the Courts, in the absence of any positive evidence to show the existence of any other property other than the plaint properties, the concurrent findings arrived at by both the Courts below, do not warrant any interference at this stage.

10. Accordingly, the judgment and decree passed by the both the Courts below are hereby confirmed and this Second Appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

- 1.The Principal District Judge, Nagapattinam
- 2.The Principal Subordinate Judge, Mayiladuthurai.
3. The V.R.Section, High Court, Madras.

+1 cc to Mr.A.Muthukumar Advocate sr46086

S.A.No.1008 of 2002

rjl(co)
aa25/09/2019