



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

C.M.S.A.Nos.7 of 2018 and 2 of 2019

1.N.Raja
2.N.Rajesh

.. Appellants in both Appeals

Vs

1.T.Sivakumar
2.Lalitha Devi
3.K.R.Natarajan

... 1st Respondent in CMSA.No.7/18
... 1st Respondent in CMSA.No.2/19
.. 2nd Respondent in both Appeals

Prayer in both appeals: Civil Miscellaneous Second Appeals filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned 1st Additional District Judge, Erode, in A.S.Nos.24 & 25 of 2016, dated 19.07.2017, respectively, confirming the judgment and decree of the learned 1st Additional Subordinate Judge, Erode, in EA Nos.37 & 40 of 2015 in EP Nos.7 & 6 of 2013 in O.S.No.684 & 686 of 2003, dated 08.09.2015, respectively.

For Appellant in both appeals : Mr.V.Kathirvelu

For R1 in both appeals :Mr.S.Kaithamalai Kumaran
For R2 :No appearance

COMMON JUDGMENT

C.M.S.A.No.7 of 2018 is directed against the judgment and decree passed by the 1st Additional District Judge, Erode, in A.S.No.24 of 2016, dated 19.07.2017, confirming the fair and decreetal order passed by the 1st Additional Sub Judge, Erode, in E.A.No.37 of 2015 in E.P.No.7 of 2013 in O.S.No.684 of 2013, dated 08.09.2015.

2. C.M.S.A.No.2 of 2019 is directed against the judgment and decree passed by the 1st Additional District Judge, Erode, in A.S.No.25 of 2016, dated 19.07.2017, confirming the fair and decreetal order passed by the 1st Additional Sub Judge, Erode, in E.A.No.40 of 2015 in E.P.No.6 of 2013 in O.S.No.686 of 2013, dated 08.09.2015.



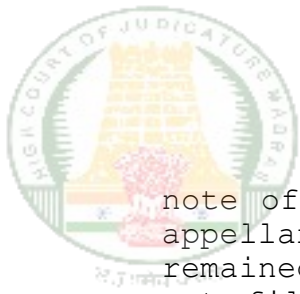
3. Heard the learned counsel appearing on either side and perused the materials available before this Court.

4. The first respondent/plaintiff in both appeals have filed a suit in O.S.Nos.684 and 686 of 2013 before the Sub-Court, Erode, seeking for recovery of a sum of Rs.1,14,900/- and Rs.1,23,050/- respectively with interest against the second respondent herein / defendant / father of the appellants herein. During the trial, the defendant/second respondent was called absent and therefore, the learned Sub-Court, after perusing the documents, namely, Ex.A1 to Ex.A4, filed by the plaintiff/first respondent herein, decreed the suit exparte as prayed for.

5. As the second respondent herein failed to comply the above said judgment, the plaintiff/deGREE holder/first respondent herein filed Execution Petition Nos.6 and 7 of 2013 praying for public auction of the schedule mentioned properties through the Court so as to realize the decree amount. Pending the EP, the appellants herein, who are the sons of the second respondent herein, have filed a petition in E.A.Nos.37 and 40 of 2015 praying to release their shares of 2/3rd from the schedule mentioned properties.

6. The learned I Additional Subordinate Judge, Erode, dismissed the said petitions filed by the appellants herein/sons of the second respondent herein by holding that the appellants herein have failed to file any oral and documentary evidence to depict that they are entitled for 2/3rd share of the scheduled mentioned properties and it is further held that they did not even file the original partition deed dated 15.06.1981. As against that when appeals were preferred, the learned I Additional District Judge, Erode, by taking note of the fact that the appellants herein neither produced any document to show that the schedule mentioned properties are joint family properties nor the partition deed dated 15.06.1981 bearing Document No.3213/1981 registered on the file of the Sub Registrar Office, Erode, to establish their shares in the schedule mentioned properties, dismissed the said appeals by confirming the judgment and decree passed by the learned I Additional Subordinate Judge, Erode.

7. Learned counsel for the first respondent herein / plaintiff contended that right from the day one, father of the appellants herein/second respondent herein/judgment debtor, remained exparte, therefore, the trial Court passed exparte decree. It is further stated that if at all the appellants herein have any grievance, they can very well pay the decreetal amount and retrieve the properties, which according to them, more valuable than the decreetal amount.



8. In view of the above, this Court also, having taken note of the fact that right from the day one, the father of the appellants herein/second respondent herein/judgment debtor remained exparte and also taking note of the fact that they did not file any piece of document to show that they are entitled for the 2/3rd of the schedule mentioned properties and that they did not even produce the partition deed dated 15.06.1981 said to have been executed in favour of their father/second respondent herein, finds that no question of law much less substantial question of law arises for consideration in these appeals. Accordingly, the Civil Miscellaneous Second Appeals are dismissed as devoid of any merit, by confirming the concurrent judgments and decrees passed by the Courts below. No Costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rkm

To

1. I Additional District Judge, Erode.
2. I Additional Subordinate Judge, Erode.

copy to
The Section Officer
VR Section
High Court, Madras

+2 cc to Mr.Kaithamalai Kumaran Advocate sr46834 & 46833

C.M.S.A.Nos.7 of 2018
and 2 of 2019

ssv(co)
aa13/11/2019