

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 06.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
S.A.No.595 of 2015
and M.P.No.1 of 2015

1. M/s.Suseela Siluvai Mary
2. Minor D.Avila Margret ... Appellants/Plaintiffs

*[P2 is rep. by her mother and guardian
Suseela Siluvai Mary]

Versus

1. D.Arockiaraj (deceased)
2. D.Amalarani
3. D.Mary Amutha
4. A.Jennifer Bharathi
5. A.J.Seejal
6. A.J.Leonard ... Respondents/Defendants

*[RR5 & 6 are represented by their
mother and guardian A.Jennifer Bharathi]

*[RR4 to 6 brought on record as LR's of the
deceased R1 vide order of this Court dated
20.04.2019 made in MP.Nos.2 to 4 of 2014
in SA.SR.No.42019 of 2014]

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 12.08.2013 passed in A.S.No.17 of 2010 by the V Additional District and Sessions Judge, Coimbatore revising the judgment and decree dated 30.03.2009 in O.S.No.465 of 2005 passed by the II Additional Subordinate Court, Coimbatore.

For Appellants : Mr.K.S.Sri Giriprasath

For Respondents : R1 Died

Mr.R.Dinesh Kumar, for RR2 & 3
RR4 to 6-Notice returned "no such person"

JUDGMENT

This appeal arises out of the judgment and decree passed by the V Additional District and Sessions Judge, Coimbatore in A.S.No.17 of 2010.

2. The appellants as plaintiffs instituted a suit in O.S.No.465 of 2005 for partition claiming 1/4th share on the basis of the registered Will, EX.A3 dated 09.07.1999 executed by the first plaintiff's husband Devaraj. The Trial Court accepting the case of the plaintiffs decreed the suit granting 1/4th share in favour of the plaintiffs. On appeal, the learned Sessions Judge reversed the finding of the Trial Court.

3. It is seen that during the pendency of the appeal, the first respondent died and his legal heirs were impleaded as respondents 4 to 6. When the appeal is taken up for hearing, learned counsel for the respondents 2 and 3 filed an affidavit on behalf of the respondents 2 and 3 stating that during the pendency of the appeal, they entered into a compromise with the appellants and they have agreed to give 1/4th share in the suit property as per the Will, EX.A3 dated 09.07.1999, and prayed to confirm the judgment and decree of the II Additional Subordinate Court, Coimbatore passed in O.S.No.465 of 2005 dated 30.03.2009.

4. The learned counsel for the appellants would state that on the basis of the affidavit filed by the respondents 2 and 3, the appeal can be allowed and the judgment of the Trial Court can be restored, for which, the counsel for the respondents 2 and 3 has no objection.

5. In the light of the above facts, the judgment and decree passed in A.S.No.17 of 2010 by the V Additional District and Sessions Judge, Coimbatore is set aside and the judgment of the II Additional Subordinate Court, Coimbatore dated 30.03.2009 in O.S.No.465 of 2005 is restored. Accordingly, this second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The V Additional District and Sessions Judge, Coimbatore

2. The II Additional Subordinate Judge, Coimbatore

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.K.S.Sri giriprasath , Advocate SR.No. 102743

S.A.No.595 of 2015