

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 13.12.2019  
CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1235 of 2019  
and  
C.M.P.No.26763 of 2019

1.P.K.Babu  
2.Papathi Ammal  
3.P.K.(Chinna) Kanniappan

... Appellants/ Appellants/ Defendants

Vs

P.K.Kanniappan ... Respondent/ Respondent/Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 03.10.2018 made in A.S.No.184 of 2015 on the file of the VI Additional City Civil Court, Chennai and confirmed the judgment and decree dated 20.03.2015 made in O.S.No.5056 of 2013 on the file of the XII Assistant City Civil Court, Chennai.

For Appellants : Mr.M.Balasubramanian

JUDGMENT

This appeal is directed against the judgment and decree of the VI Additional Judge, City Civil Court, Chennai in A.S.No.184 of 2015.

2.The defendants are the appellants herein. The respondent is the plaintiff, who instituted a suit in O.S.No.5056 of 2013 against the appellants seeking 1/4<sup>th</sup> share in the suit schedule property.

3.According to the plaintiff, the suit property was originally owned by his father P.M.Krishnaswamy and he died intestate on 03.03.1966, leaving behind his wife P.K.Rukmani, the plaintiff and the defendants as his legal heirs. It is further stated that the plaintiff along with his mother and the defendants had mortgaged the property with M/s.George Town Co-operative Bank Limited on 19.08.1985 and after discharge, it was again mortgaged in the year 1988. According to the plaintiff, he is in possession of the property and that he is entitled for 1/4<sup>th</sup> share in the suit property.

4.The suit was contested by the defendants/appellants by stating that the plaintiff is not in possession of the property since 1983 and that he is not entitled for the share. It is further stated that the 1<sup>st</sup> defendant developed the property by spending Rs.1,60,000/-.

5.Before the Trial Court, the plaintiff examined himself as PW.1 and Exs.A1 to A8 were marked and on behalf of the defendants D.Ws.1 and 2 were examined, but no documents were marked.

6. The Trial Court, after analysing the entire evidence, held that the plaintiff is entitled for 1/4<sup>th</sup> share in the suit property. The findings of the Trial Court is confirmed by the Appellate Court. Challenging the same, the present appeal.

7.Mr.M.Balasubramanian, learned counsel for the appellants would submit that even in the evidence PW1 has admitted that the defendants are in possession of the property and the plea taken by the defendants were not properly considered by the Courts below. According to the learned counsel, the findings of the Courts below are perverse and it requires interference by this Court.

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

9. Perusal of the records would reveal that the first defendant in his evidence has categorically admitted that the suit property belongs to the plaintiff and the defendants, after the demise of their parents and hence, the plaintiff is entitled for 1/4<sup>th</sup> share. It is also admitted that the defendants along with plaintiff and their mother had mortgaged the property. Exs.A1 and A2 the mortgage deeds would reveal the joint mortgage made by the parties. Since the defendants are categorically admitted that the plaintiff is also entitled for 1/4<sup>th</sup> share in the suit property, this Court unable to appreciate the contentions put forth by the learned counsel for the appellants.

10. I find no valid reason to interfere with the concurrent findings of the Courts below. Hence, the findings of the Courts below are confirmed. In fine, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

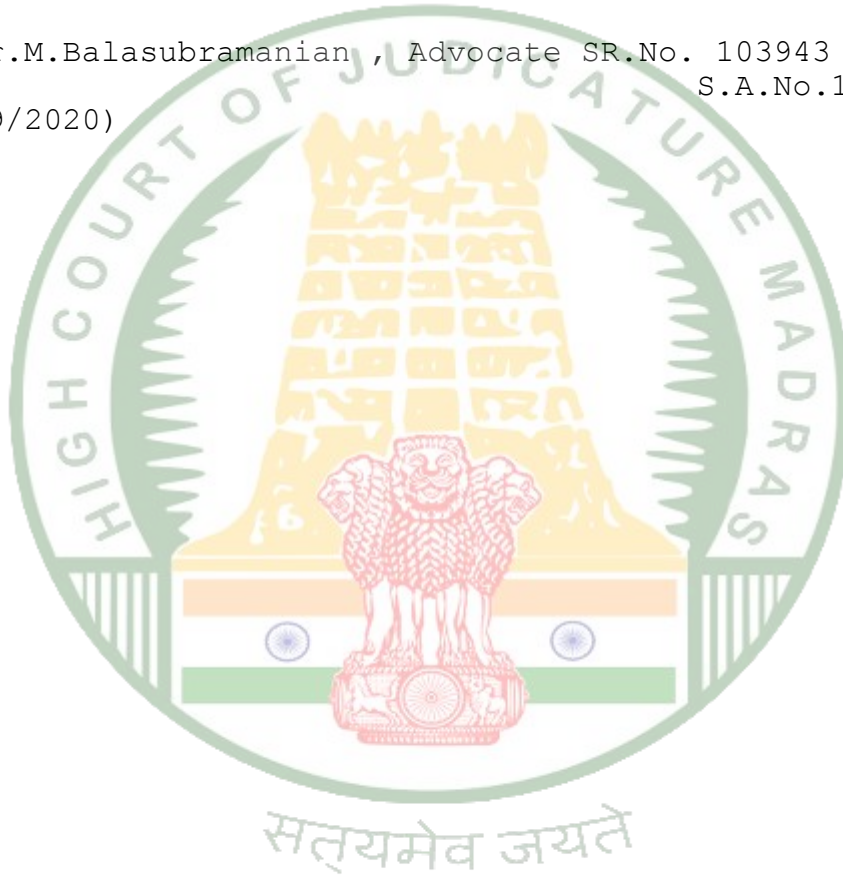
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To

1.The VI Additional Judge,  
City Civil Court,  
Chennai.

2.The XII Assistant Judge,  
City Civil Court,  
Chennai.

+1cc to Mr.M.Balasubramanian , Advocate SR.No. 103943  
S.A.No.1235 of 2019  
A.SK(07/09/2020)



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