

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.08.2019

PRONOUNCED ON : 21.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.843 of 2019

1.Amar Jothi
2.Malaiyan Naicker Appellants/Defendants 2 &3

Vs.

1.Sudhanthira Devi
2.Vijayalakshmi ...Respondents1 & 2/Plaintiffs
3.Deivegarajan ...3rd Respondent/1st defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 05.02.2019 passed in A.S.No.71 of 2015 on the file of the Subordinate Court, Kallakurichi, confirming the Judgment and Decree dated 04.03.2015 passed in O.S.No.444 of 2009 on the file of the Principal District Munsif Court, Kallakurichi.

For Appellants : Mr.S.Ramajayam

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 05.02.2019 passed in A.S.No.71 of 2015 on the file of the Subordinate Court, Kallakurichi, confirming the Judgment and Decree dated 04.03.2015 passed in O.S.No.444 of 2009 on the file of the Principal District Munsif Court, Kallakurichi.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for partition.

4.It is found that the parties are not in dispute that the suit properties and the other properties belonged to Periyammal and that, she had settled the same in favour of the plaintiffs' mother Pavunammal by way of the settlement deed dated 26.06.1944 and after the demise of Pavunammal and her husband Venugopal, according to the plaintiffs, the plaintiffs and their brother

viz, the first defendant are entitled to the properties left behind by Pavunammal in equal moieties. The abovesaid facts are not put in issue by the contesting defendants.

5. According to the plaintiffs, the suit properties had been alienated by the first defendant in favour of the defendants 2 & 3 and thereby, deprived of the plaintiffs' share in the suit properties and hence, claiming share in the suit properties, the plaintiffs have come forward with the suit seeking for partition.

6. The contesting defendants viz., the defendants 2 & 3 put forth the case that the suit properties had been purchased by them from the first defendant bonafidely for a valid consideration and therefore, the plaintiffs are not entitled to challenge the alienation made by the first defendant in their favour and mainly, it is contended by the contesting defendants that the plaintiffs, the first defendant and Venugopal had jointly alienated the various properties left behind by Pavunammal and also put forth the case that the first defendant had also alienated the various other properties to the third parties on many occasions and the plaintiffs have not questioned the abovesaid alienations and also not impleaded the other purchasers from the first defendant and also not included the properties alienated by the first defendant to others and therefore, contended that the suit laid by the plaintiffs, without impleading all the purchasers and also without including all the properties, is bad in law and on that ground alone, the plaintiffs' suit is liable to be dismissed.

7. Based on the materials placed on record by the respective parties and the submissions made, the Courts below were pleased to reject the abovesaid defence version and accordingly, granted the preliminary decree in favour of the plaintiffs declaring their share in the suit properties as prayed for. Impugning the same, the defendants 2 & 3 have preferred the present second appeal.

8. The main contention put forth by the defendants' counsel is that when the plaintiffs have themselves admitted that the first defendant had alienated the other properties to the various persons and when the same had also been established by the defendants by placing the copies of the sale deeds as documents on their side, according to him, the plaintiffs should have impleaded the other purchasers and also included the properties alienated to others and without the plaintiffs doing so, according to him, the plaintiffs' suit for partial partition is bad in law.

9. As could be seen from the materials available on record, after the alienation of the various properties by the first

defendant as well as by the plaintiffs, the first defendant and Venugopal to various persons, only the suit properties are available with the family, and admittedly, the suit properties had not been divided amongst the sharers viz., the plaintiffs and the first defendant. It is thus found that the plaintiffs would be entitled to obtain partition and separate possession of 2/3 share in the suit properties. However, the first defendant had alienated the suit properties in favour of the contesting defendants without the knowledge and consent of the plaintiffs. In such view of the matter, the abovesaid alienation made by the first defendant in favour of the contesting defendants, qua the suit properties would not be binding upon the plaintiffs as determined by the Courts below. Furthermore, this is not a suit for General partition. The suit has been laid by the plaintiffs against the purchasers of the suit properties claiming that they also have share in the same and that the first defendant is not entitled to alienate the suit properties in favour of the contesting defendants including their shares. It is not the case of the contesting defendants that they are not aware of the entitlement of the plaintiffs to their lawful shares in the suit properties. In such view of the matter, the plaintiffs, as determined by the Courts below, would be lawfully entitled to claim their share in the suit properties.

10. When the suit is found to have been laid by the plaintiffs only against the properties alienated by the first defendant in favour of the contesting defendants and the suit laid by the plaintiffs is not the general suit for partition, in such view of the matter, it is found that, as determined by the Courts below, the plaintiffs would be entitled to maintain the suit as against the suit properties alone alienated in favour of the contesting defendants for partition. In such a suit, there is no necessity on the part of the plaintiffs to implead the other parties, who had purchased the other properties from the first defendant and there is no necessity for including the said alienated properties in the present suit as it is not a suit for general partition. The abovesaid position of law could also be gathered from the decision reported in 1933 65 MLJ 696 (Kandaswami Goundan (Deceased) Vs. Venkatarama Goundan and Ors.). I had also an occasion to consider the abovesaid decisions in the judgment rendered by me dated 18.12.2017 passed in S.A.No.3 of 2011 (Thangammal and two others Vs. Karuppa Pillai and seven others).

11. In the light of the abovesaid discussions, when the plaintiffs are not necessitated to implead the purchasers of the other properties and also include the said properties for partition in the present suit, on the whole, it is found that the Courts below are found to be justified in declaring the shares, to which, the plaintiffs are entitled to in the suit

properties and granted the preliminary decree in favour of the plaintiffs. No valid reason is warranted to interfere with the concurrent judgment and decree of the Courts below.

For the reasons aforesaid, no substantial question of law is found to be involved in this second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar

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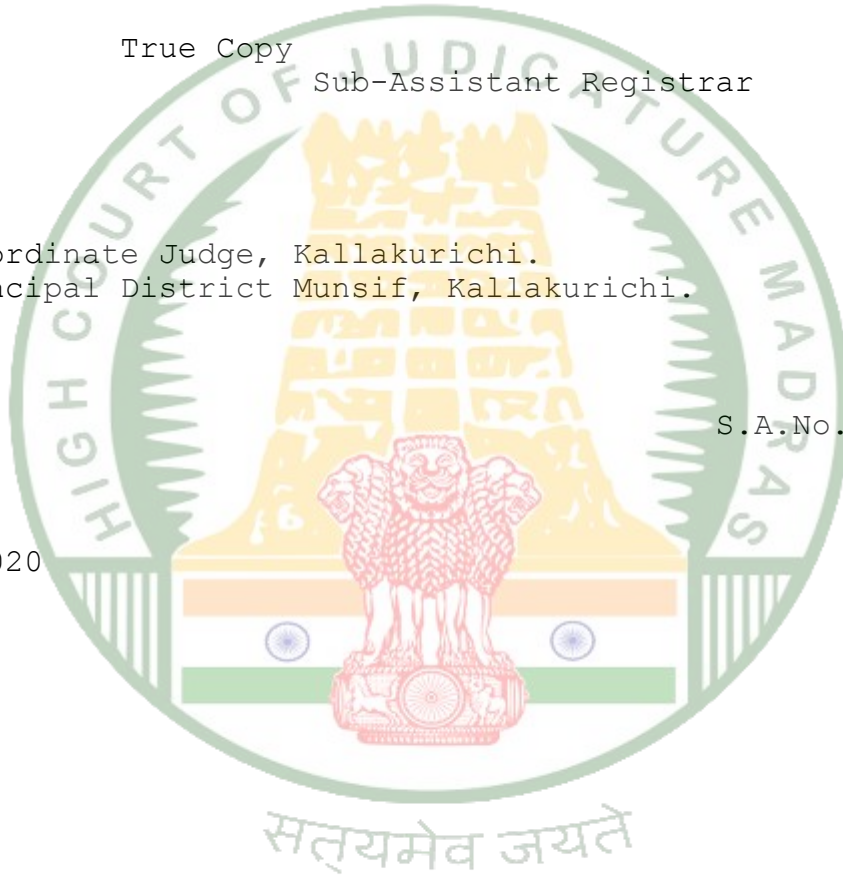
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To

- 1.The Subordinate Judge, Kallakurichi.
- 2.The Principal District Munsif, Kallakurichi.

S.A.No.843 of 2019

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