



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.146 of 2017

Sivagamy

..Appellant

Vs.

1.Rangasamy Gounder
2.Muthusamy
3.Mylathal

..Respondent

Prayer : First Appeal filed against the Judgment & Decree dated 21.12.2016 passed in O.S.No.68 of 2013 on the file of the III Additional District & Sessions Court, Coimbatore.

For Petitioner : Mr.P.Veena Suresh

For Respondent : Mr.C.R.Prasanan

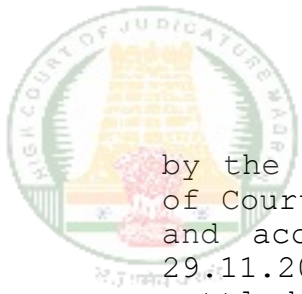
ORDER

The appeal suit is filed against the judgment and decree dated 21.12.2013 passed in O.S.No.68 of 2013.

2. The suit was instituted by the appellant for partition seeking the suit property into four equal shares and to allot one such share to the plaintiff and for permanent injunction.

3. The first defendant in the suit is the father of the plaintiff as well as the defendants 2 and 3. In other words, one daughter instituted a suit for partition against her father and brother and another sister.

4. First of all, the suit itself cannot be maintained, in view of the fact that the first defendant/father is alive and he is in possession and enjoyment of the property. Therefore, the partition would arise after his life time. Secondly, the very same plaintiff earlier instituted a civil suit in O.S.No.640 of 2012, on the file of the very same III Additional District Court at Coimbatore, for the very same relief of partition of the suit schedule property into four equal shares and to allot one such share to the plaintiff. At the outset, the suit was filed originally in O.S.No.640 of 2012 and the said suit was withdrawn



by the plaintiff on the ground that the issues were settled out of Court. A memo to that effect was filed before the Trial Court and accepting the memo, the Trial Court passed an order on 29.11.2012, dismissing the suit as withdrawn and as it is settled out of Court and further, ordered for refund of half Court Fee, less 5%.

5. Two grounds are to be considered in this appeal suit, as the adjudication of all further facts and circumstances became unnecessary. The first ground to be considered is whether the suit can be entertained as the plaintiff has not established any right or cause of action for the purpose of grant of relief of partition.

6. Admittedly, the first defendant father is alive and therefore, the question of partition would not arise at all. This apart, the earlier suit was dismissed as withdrawn by filing a memo on the ground that the issues between the parties were settled out of Court. The reliefs sought for in the earlier plaint in O.S.No.640 of 2012 and in the present plaint in O.S.No.68 of 2013 are one and the same. Therefore, the plaintiff is not entitled to institute the second suit for partition. This apart, the issues were reported as settled between the parties. When the issues were reported as settled between the parties, in respect of partition and the suit was withdrawn, the question of entertaining a fresh suit would not arise at all, more so, between the parties, with reference to the same suit schedule property. This being the prime contention considered by the Trial Court for dismissal of the original suit, this Court does not find any infirmity or perversity and the appellant had not established even a semblance of legal right so as to entertain the suit by the Trial Court and the Trial Court rightly rejected the same.

7. This being the factum, this Court is of the opinion that the adjudication of all other facts and circumstances as well as the issues are became unnecessary and accordingly, the judgment and decree passed by the Trial Court on 21.12.2016 in O.S.No.68 of 2013 is confirmed and the first appeal stands dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb



To

The III Additional District & Sessions Court,
Coimbatore.

WEB COPY

+1 CC to Mr.P.Veena Suresh, Advocate sr 104701
+1 CC to Mr.C.R.Prasanan, Advocate sr 104973.

A.S.No.146 of 2017

RR(CO)
SP(21/08/2020)