



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A(MD)No.404 of 2019

and

CMP(MD)No.8012 of 2019

P.Sathananthan ... Appellant/1st Respondent/1st Defendant
Vs.
1.K.Vasantham ...1st Respondent/Appellant/Appellant
2.K.Padmam
3.P.Geetha
... 2&3 Respondents/ 2&3 Respondents/
2&3 Respondents

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 25.07.2018 made in A.S.No.11 of 2016 on the file of learned Principal District Judge, Kanyakumari at Nagercoil reversing the judgment and decree dated 13.04.2015 made in O.S.No.220 of 2012 on the file of learned Second Additional Subordinate Judge, Nagercoil.

For Appellant

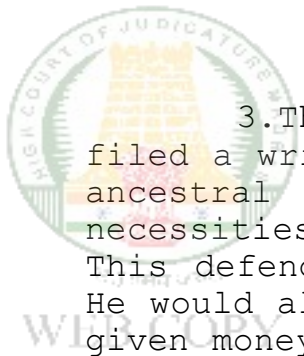
: Mr.V.S.Kumaraguru

JUDGMENT

The first defendant is the appellant in the second appeal. The second appeal has been filed challenging the judgment and decree dated 25.07.2018 passed in A.S.No.11 of 2016 on the file of the learned Principal District Judge, Kanyakumari, in and by which the learned Principal District Judge, had reversed the judgment and decree passed by the learned Second Additional Subordinate Judge, Nagercoil, in O.S.No.220 of 2012.

2.The brief facts shorn of details necessary for disposing the above second appeal, are as follows:-

The first respondent herein had filed a suit for partition in O.S.No.220 of 2012. It is her case that the suit property belonged to one Podiyappi, who died intestate on 30.05.2008. Therefore, she along with the defendants inherited the property of her father. It is her case that despite requesting the defendants to partition the above suit property, they had not come forward to partition the property. Therefore, the plaintiff had come forward with the suit for partition.



3.The first defendant who was the contesting defendant had filed a written statement *inter alia* contending that the father had ancestral property and he had sold the same for the family necessities and thereafter, he had constructed the plaint property. This defendant had denied the joint possession with the plaintiff. He would also submit that the plaintiff and defendants 2 and 3 were given money in lieu of their share in the property and on receiving the same, they had got separated. The first defendant would also contend that he alone is residing in the suit property and therefore, the plaintiff and other defendants are not entitled any share in the said property. The defendants 2 and 3 also toed the case of the plaintiff by seeking the partition of their $\frac{1}{4}$ share each in the plaint schedule property.

4.The trial Court was pleased to dismiss the suit on the ground that the plaintiff had been paid compensation in the lieu of her share and therefore, she is not entitled to any share in the suit property.

5.The matter was taken on appeal by the plaintiff before the learned Principal District Judge, Kanyakumari, in A.S.No.11 of 2016. The learned Principal District Judge had allowed the appeal and set aside the judgment and decree made in O.S.No.220 of 2012 by the learned Second Additional Subordinate Judge, Nagercoil. Aggrieved by the same, the appellant / first defendant is before this Court.

6.The learned counsel for the appellant/first defendant would reiterate the argument that the plaintiff and other defendants had been settled their share in the form of cash and fixed deposit. Therefore, they are not entitled any share in the suit property.

7.Though the said defence has taken by the learned counsel for the appellant/first defendant, the same has not been substantiated in the manner known to law and in the absence of such a proof the appellant cannot call in question the judgment and decree under appeal.

8.Considering the fact that the suit property belonged to the father and since the father died intestate, the plaintiff and the defendants are jointly entitled to the property, the Lower Appellate Court rightly granted the decree for partition. The first defendant has not made out any substantial question of law warranting this Court to interfere in the judgment and decree passed by the learned Principal District Judge, Kanyakumari at Nagercoil in A.S.No.11 of 2016.

9.In the result, this Second Appeal stands dismissed by confirming the Judgment and Decree dated 25.07.2018 passed in A.S.No.11 of 2016 by the learned Principal District Judge, Kanyakumari at Nagercoil. No costs. Consequently, connected



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// True Copy //

Sd/-
Assistant Registrar (CS-III)

Sub Assistant Registrar(CS)

cp

To

1. The Principal District Judge,
Kanyakumari at Nagercoil.
2. The Second Additional Subordinate Judge,
Nagercoil.
- 3.The Section Officer,-2 copies
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.S KUMARAGURU, Advocate (SR-86727[F] dated 16/09/2019)

Judgment Made in
S.A(MD)No.404 of 2019
and
CMP (MD)No.8012 of 2019
13.09.2019

_KM/ (25.10.2019) 3P 6C