

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.1061 of 2010

and

M.P.No.1 of 2010

E.Muthiyalu .. Appellant/Plaintiff

Vs.

1.E.Dayalan

2.E.Ganesan .. Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 29.09.2009 passed in A.S.No5 of 2009 by the II Additional Subordinate Judge, Salem, confirming the judgment and decree dated 12.03.2008 passed in O.S.No.527 of 2007 by the Principal District Munsif, Salem.

For Appellant : No appearance

For Respondent : Mr.T.Sezhian for R1

R2-Died(Steps due)

J U D G M E N T

(The case has been heard through video conference)

This Second Appeal is filed by the plaintiff against the defendants who are the brothers. Both the Courts in the suit for partition held against the appellant holding that the father of the parties Mr.Eswara Chetty and his wife had executed a will in respect of the suit property and the same has come into effect after their demise. The appellant have no right in the suit schedule property.

2. Being aggrieved by the concurrent findings, the present Second Appeal is filed, agitating that the suit property is the ancestral property which cannot be disposed of through will.

3. Pending appeal one of the respondent died and the same was intimated to the appellant. The appeal was listed on 06.08.2020, 18.08.2020, 09.10.2020 and on 06.11.2020. The appellant has not turned up and no petition to implead the legal representatives of the deceased 2nd respondent filed or numbered.

4. On considering the facts of the case, this Court finds that both the Courts on facts have categorically held that the suit property is not an ancestral property and the same has been disposed through will. Therefore, there is no substantial question of law involved in this case for interference.

5. Accordingly, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

rpl

To

1. The II Additional Subordinate Judge,
Salem.

2. The Principal District Munsif, Salem

Copy To

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

+1cc to M/s.R.Meenal, Advocate SR.No.36229

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NMI (CO)
GMY (20/04/2021)