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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.609 of 2020

1. J.Kalaiaarasi
2. J.Vijayalakshmi
3. J.Banumathi
4. J.Manivannan

... Appellants/Defendants

Vs

1. D.Bhuvaneswari
2. D.Senthilkumar
3. D.Mahendiran
4. D.Soundramurthy
5. D.Subashini

... Respondents/Plaintiffs

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and decree dated 10.01.2020 passed in A.S.No.136 of 2017 on the file of the learned Principal District Judge, Vellore District, confirming the decree and Judgment, dated 29.02.2016 passed in O.S.No.109 of 2012 on the file of the learned District Munsif Court, Katpadi Vellore District.

For Appellants : Mr.J.R.K.Bhavananthan for
Mr.S.N.Ravichandran

J U D G M E N T

Aggrieved by the decree for partition in O.S.No.109 of 2012, confirmed in A.S.No.136 of 2017, the defendants in the said suit have come up with this second appeal.

2. The relationship between the parties is admitted and the quantum of shares is also admitted. But the only challenge of the defendants is that the partition took place even on 01.07.2011 under a registered partition deed and in view of the recital in the said instrument that there is no other property that belonged to the brothers to be devided, the suit is not maintainable.



3. The Courts below upon consideration of the evidence on record concluded that the partition deed dated 01.07.2011 was with reference to the self acquired properties of the brothers namely Dhakshinamoorthy and Jothi Mudaliar.

4. The recitals in the said instrument have considered by both the Courts below and both the Courts have reached a specific finding that that documents only relates to self acquired properties of the brothers and not the ancestral properties. On the said findings, the Courts had granted a decree for partition.

5. I have heard Mr.J.R.K.Bhavananthan, learned counsel appearing for the appellants.

6. Mr.J.R.K.Bhavananthan, learned counsel appearing for the appellants would invite my attention on the recitals in the said document namely partition deed, dated 01.07.2011 to contend that the conclusions of the Courts below is against the factual matrix. He would also further contend that the appellants have also ousted the respondents from the suit properties.

7. As regards the second contention of Mr.J.R.K.Bhavananthan, I do not think that he can be allowed to raise the said contention since there is no pleading or evidence regarding ouster. As regards the first submission, the Courts below have taken note of the recitals in the entire document and reached a conclusion that the documents did not pertain the ancestral properties of the two brothers namely Dhakshinamoorthy and Jothi Mudaliar.

8. Despite his best efforts, Mr.J.R.K.Bhavananthan, is unable to show that the concurrent findings of the Courts below can be termed as perverse. In the absence of perversity, I cannot re-appreciate the evidence and come to a different conclusion, sitting in a second appeal. I do not find any question of law, much less a substantial question of law, in order to enable me to entertain the second appeal. The appeal therefore fails and it is accordingly dismissed without being admitted.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



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To

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1. The Principal District Judge,
Vellore District
2. The District Munsif Court,
Katpadi.

+1cc to Mr.S.N.Ravichandran, Advocate Sr.38387

S.A.No.609 of 2020

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srg 25/08/2021