

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.204 of 2014

and

M.P.No.1 of 2014

B. Rangaraj ... Appellant/Appellant/Plaintiff

Vs

1. Peria Badrappan

2. Sivasamy

3. N. Shanmugasundaram

4. S.K. Shanmugam ... Respondents/Respondents/Defendants

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 07.10.2013 passed in A.S.No.32 of 2013 on the file of the Subordinate Court, Sathyamangalam, Erode District confirming the decree and judgment dated 22.02.2013 passed in O.S.No.323 of 2011 by the District Munsif Court, Sathyamangalam, Erode District.

For Appellant : Mr. Roshan Atiq

For respondents: Mr.Mohammed Ismail
for R1 & R2

J U D G M E N T

The plaintiff in O.S.No.323 of 2011, who suit for bare injunction restraining the defendants from alienating or encumbering his share in the suit properties, which according to him are joint family properties, was dismissed by the trial Court, upon the said judgment, being affirmed by the First Appellate Court, has come up with the Second Appeal.

2. The plaintiff would claim that the first defendant, namely, his father, has entered into an Agreement of Sale with

the 4th defendant on 29.06.2009 agreeing to sell the entire property including his share. Claiming that the first defendant has no right to do so, the plaintiff has come up with this suit seeking a bare injunction. The suit was resisted by the defendants contending that there was an oral partition earlier, wherein the suit property was allotted to the share of the defendants 1 and 2. Hence, the suit itself is not maintainable.

3. The second defendant filed a separate written statement taking a substantially similar stand. At trial, the plaintiff was examined as P.W.1 and one Chinna Badrappan was examined as P.W.2. The first defendant was examined as DW1. Exs.A1 to A4 were marked on the side of the plaintiff and Ex.B1 was marked on the side of the defendants.

4. The trial Court, upon a consideration of the evidence on record, concluded that the plaintiff cannot claim an injunction for alienation alone. The trial Court found that the remedy of the plaintiff is to institute a suit for partition. The trial Court, however, concluded that the suit is barred under Order 2 Rule 2 of Code of Civil Procedure. On the said conclusion, the trial court dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No.32 of 2013. The lower Appellate Court concurred with the conclusions of the trial Court, except the one relating to the bar Under Order 2 Rule 2 of Code of Civil Procedure. The trial Court observed that the bar under Order 2 Rule 2 would not apply to the first suit. On the said findings, the learned Appellate Judge dismissed the appeal and confirming the judgment and decree of the trial Court.

5. I have heard Mr. Roshan Atiq, learned counsel appearing for the appellant.

6. Mr. Roshan Atiq would vehemently contend that since the first defendant had in his cross examination admitted that the plaintiff has got a share in the suit property, the Courts below were not right in this dismissing the suit. It is settled law that as a Manager or Kartha, the first defendant has got the power to alienate the Joint Family Property. If one of the co-parceners wants to prevent the Manager from alienating the property, the remedy of such co-parcener is to sue for partition and not to seek permanent injunction restraining the Manager from alienating the property. Such an injunction suit is unheard of. Once the power of the Manager to alienate the property for legal necessity is admitted, the Court cannot injunct him from exercising the said power. Therefore, I do not find any error or perversity in the conclusions of the Courts below when they held that the suit is not maintainable. I do not find any question of law much less a substantial question of law enabling me to entertain the appeal. The appeal

therefore fails and it is accordingly dismissed without being admitted. It is open to the plaintiff to seek appropriate remedy as is available to him including a suit for partition. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

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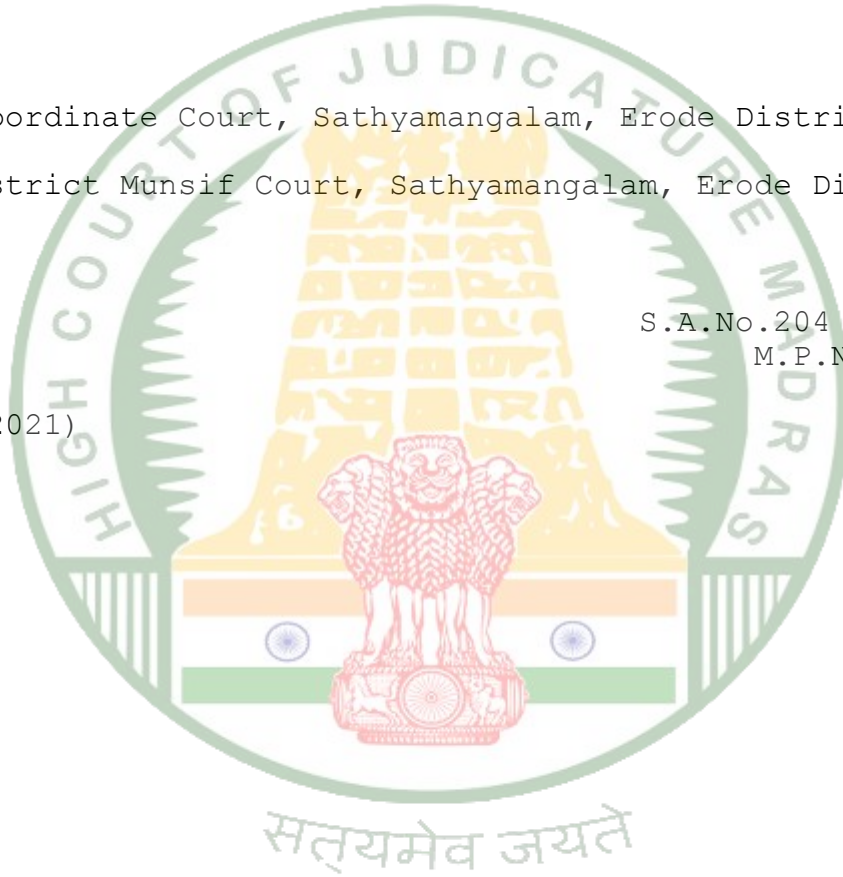
Sub-Assistant Registrar

mrp
To

1. The Subordinate Court, Sathyamangalam, Erode District.
2. The District Munsif Court, Sathyamangalam, Erode District.

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