



IN THE HIGH COURT OF JUDICATURE AT MADRAS

20.07.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.602 of 2008

Periya Sennammal ... Appellant/Appellant/Plaintiff

Vs.

1.Chinnammal
2.Nallammal
3.Chinna Sennammal
4.Chenna Naicker
5.Naga Naciker
6.Chenna Naciker
7.Kuppa Naicker
8.Palaniammal
9.Chennammal ... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code against the judgement and decree dated 14.08.2007, made in A.S.No.100 of 2006 on the file of the Additional District Judge - Fast Track Court IV - Bhavani - confirming the judgment and decree dated 02.11.2005 made in O.S.No.73 of 2005 on the file of the Principal District Munsif Court, Bhavani.

For Appellant : M/s. Zeenath Begum
For Respondents : Mr. R.marudhachalamurthy for R4
No appearance for R1 & R2
R3 & R5 died vide order
dated 07.07.2021
R6 to R9-Notice discharged with
vide order dated 07.07.2021

JUDGEMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court. The suit in O.S.No.73 of 2005 has been filed by the appellant herein to set aside the decree dated 26.03.2004 in O.S.No.436 of 2004 on the file of the II Additional District Munsif cum Judicial Magistrate, Bhavani.

2. It is the case of the plaintiff that the suit property belonged to one Periya Palani Naickar who is her paternal grandfather. Periya Palani Naickar had three sons, viz., Muthu



Naickar, Palani Naickar and Chenna Naickar and defendants 5 to 9 are the children of Muthu Naickar and the first defendant is the wife of the Palani Naickar and second and fourth defendants are his children.

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3. It is the case of the plaintiff that Palaniyappa Naickar, her paternal uncle had sold an extent of 57 ½ cents to her father Chenna Naickar under two sale deeds dated 26.05.1958 and 28.03.1961. By reasons of the above sale, each of the sons of Periya Palani Naickar became entitled to the following extent:-

Muthu Naickar became entitled to an extent of 1.15 ½ acres, Palani Naickar was entitled to an extent of 0.57 ½ cents and Chenna Naickar was entitled to 1.72 1/2 cents. After the death of their father, Chennai Naickar, the plaintiff and the third defendant were together entitled to 9/18 share in the suit schedule property.

4. However, suppressing the fact that Chenna Naickar was entitled to a higher share. The first and second defendants herein had originally filed O.S.No.436 of 2004 for a partition of their shares in the suit property. The said suit was also decreed by judgment and decree dated 26.03.2004 by the II Additional District Munsif, Bhavani. By reasons of the earlier judgment, the plaintiff and her sister/third defendant, became entitled to 6/18th share and defendants 8 and 9 herein were not given any share and defendants 5, 6 and 7 were together allotted 6/18th share and the fourth defendant was allotted to 4/18 share. Each of the plaintiffs were allotted by 1/18th share and jointly an extent of 2/18. The case of the plaintiff is that by suppressing the sale deed executed by Palani Naickar in favour of Chenna Naickar, defendants 1 and 2 had manipulated and got a higher share allotted to their share. The decree therefore, is a fraudulent one. The appellant herein had sought to set aside the same.

5. It was only the fourth respondent, the son of Palani Naickar who had contested the suit. The trial Court dismissed the suit stating that the remedy of the plaintiff was only to file an appeal and not by filing a subsequent suit. Aggrieved by the said judgment and decree, the appellant had filed A.S.No.100 of 2006 on the file of the Fast Track Court IV (Additional District Judge), Bhavani. The Appellate court also has dismissed the said suit .

6. Heard the learned counsel on either side.

7. From the perusal of the judgment in O.S.No.436 of 2004 which has been filed in the typed set of papers, it is seen that the appellant and the third defendant had filed a written



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statement in which the only defence taken out by them was that the plaintiffs therein i.e. Defendants 1 and 2 herein had never requested for a partition and therefore, their contention that the defendants therein had not come forward for partition is absolutely false. In fact, the appellant and her sister had contended that they have no objection to a partition being effected. The present suit is filed stating that the appellant had given all the documents to the Advocate who has not filed the same in the earlier suit. Be that as it may, the remedy of the appellant is to challenge the decree by filing an appeal and if certain documents had not been brought to the notice of this Court to take out the application for receiving additional documents. The appellant cannot file an other suit to set aside the decree granted in the earlier suit, that too, within a year of passing of the earlier judgment and decree. It is not a case of the appellant that she has not participated in the earlier proceedings. On the contrary, she has participated in the proceedings and filed a written statement subjecting herself to a decree for partition.

8. In the above circumstances, I do not find any substantial question of law warranting interference in the concurrent judgment and decree of the Courts below.

9. In the result, the Second Appeal stands dismissed. No order as to costs.

Sd/-

Assistant Registrar(T&P)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Fast Tack Court IV - Bhavani.

2.The Principal District Munsif Court,
Bhavani.

+1cc to Mr.R.Marudhachalamoorthy, Advocate, S.R.No.34736

+1cc to Mr.V.Rajesh, Advocate, S.R.No.34725

S.A.No.602 of 2008

SSD(CO)
CB(29/10/2021)