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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.188 of 2012

and

M.P.No.1 of 2012

1.Sarojini
2.Subbulakshmi
3.Sakuntala Devi

... Appellants/Appellants/Plaintiffs

Vs.

1.Sri Sivamani
2.Sumathi
3.Baby
4.Mayankathal

... Respondents/Respondents/Defendants

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 28.09.2011 made in A.S.No.99 of 2010 on the file of the Additional District & Sessions Judge, FTC IV, Coimbatore at Tiruppur confirming the judgment and decree dated 07.01.2010 made in O.S.No.39 of 2005 on the file of the Principal Sub-Judge, Tiruppur.

For Appellants : Mr.K.S.Karthik Raja

For Respondents : Mr.V.P.Sengottuvel
for R1 to R4

JUDGMENT

The appellants were the un-successful plaintiffs before the Trial Court and appellant before the First Appellate Court. They are aggrieved by the impugned judgment and decree dated 28.09.2011 in A.S.No.99 of 2010 passed by the Additional District & Sessions Judge, FTC IV, Coimbatore at Tiruppur dismissing their appeal against the judgment and decree dated 07.01.2010 by the Trial Court in O.S.No.39 of 2005 (Additional Subordinate Judge, Tiruppur).



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2.The above suit was filed by the appellant for the following reliefs:-

a.To set aside the unequal partition deed dated 02.12.1977 and divide to order to pass a decree.

b.Awarding the cost of the suit to the plaintiff.

3.The case of the appellant before the Trial Court was that the partition deed dated 02.12.1997 vide exhibit A2 came to their knowledge only in the year 2004 and therefore the suit was filed within the time. The Trial Court however dismissed the suit on the ground of limitation as having filed beyond three years from the date of execution of Ex.A2 dated 02.12.1997.

4.The Trial Court observed that the suit was filed only in the year 2005. The First Appellate Court has affirmed the same. The First Appellate Court in Paragraph 19 has observed that Ex.A2 partition deed was effected on 02.12.1997 and the suit was filed on 21.05.2005 and was filed after a lapse for 7 years after execution of Ex.A2 and therefore the suit was time-barred. In this appeal, the appellants has raised the following substantial question of law:-

a.When the plaint clearly reveals the period during which the plaintiffs came to know of the unequal partition and the same being reiterated in the chief examination are the courts below right in dismissing the suit on the ground of limitation?

b.When the suit is primarily one for partition of the suit properties are the courts below right in dismissing the suit in to?

5.Defending the impugned judgment and decree passed by the Trial Court and the First Appellate Court, the learned counsel for the respondent submits that no substantial question of law arises for consideration under Section 100 of CPC and therefore this second appeal is liable to be dismissed. He further submits that the appellant who was plaintiff before the Trial Court had signed Ex.A2 partition deed dated 02.12.1997 and had also registered the same and thereafter filed the suit in the year 2005 on 25.01.2005.

6.I have considered the arguments advanced by the learned counsel for the appellant and the respondent.

7.It is made clear that the appellants had put the signature



in Ex.A2 dated 02.12.1997 and also participated in its registration before the Jurisdictional Sub Registrar.

8. That apart, as per the aforesaid partition deed, a sum of Rs.50,000/- was received in cash by the appellants. Though the contention of the appellant that the partition resulted in unjust denial of the share to the appellants, nevertheless, it is not open for it to question the aforesaid partition deed in Ex.A2 belatedly in the year 2005. The appellants have not only signed the Ex.A2 but had also appeared before the Sub Registrar and registered the aforesaid partition deed in favour of the respondent/defendant. Therefore, there is no merits in this appeal.

9. Thus this appeal is liable to be dismissed as no substantial question of law arises for determination by this Court under Section 100 of CPC. Accordingly, this appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(P&A)

//True Copy//

Sub Assistant Registrar

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To:

1. The learned Additional District & Sessions Judge,
FTC IV, Coimbatore at Tiruppur.
2. The learned Principal Sub-Judge,
Tiruppur.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.K.S.Karthik Raja, Advocate, S.R.No.29701

+1cc to M/s.V.P.Sengottuvel, Advocate, S.R.No.29886

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AJS(CO)
SU(09/11/2021)