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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.125 of 2015

and

M.P.No.1 of 2015

Indira Gandhi ... Appellant/Plaintiff in Trial Court

Vs.

Pachai Ammal (Deceased)

1.Valli @ Villammal

2.Rani

3.Senthil

4.Raju (Died)

5.R.Vijaya

6.R.Mohana

7.R.Mageswari

(RR5 to RR7 brought on record as LR's of the deceased R4 viz., Raju vide order of court dated 10/01/2020 made in CMP.No.26494 of 2019 in SA.No.125 of 2015 by MKKSJ)

... Respondents/Defendants 1 to 4
in Trial Court

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 19.09.2014 made in A.S.No.65 of 2007 on the file of Sub Court, Kallakurichi reversing the Judgment and Decree dated 24.04.2007 made in O.S.No.962 of 2004 on the file of Principal District Munsif Court, Kallakurichi.

For Appellant : Mr.G.Surya Narayanan

For R1 to R3 : Mr.N.Ishtian Ahmed

For R4 to R6 : Mr.N.Manokaran

JUDGMENT

This Second Appeal is directed against the impugned Judgment and Decree dated 19.09.2014 passed by the Subordinate Court, Kallakuruchi (hereinafter referred to as First Appellate



Court) in A.S.No.65 of 2007.

2. By the impugned Judgment and Decree, the First Appellate Court has reversed the Judgment and Decree dated 24.04.2007 passed by the Principal District Munsif Court, Kallakuruchi (hereinafter referred to as Trial Court) in O.S.No.962 of 2004.

3. The appellant was the plaintiff in O.S.No.962 of 2004. The Trial Court had partly decreed the suit filed by the appellant/plaintiff by allowing partition of Item No.1 of the Suit Schedule Properties. Aggrieved by the same, the fourth respondent (fourth defendant) who had purchased Item No.1 of the Suit Schedule Property filed A.S.No.65 of 2007 before the First Appellate Court. The First Appellate Court has by the impugned Judgment and Decree reversed the decision of the Trial Court in entirety. Therefore, the present Second Appeal has been filed.

4. This Second Appeal was admitted on 03.03.2015 on the following substantial questions of law:-

- i. Whether the lower appellate court was right in holding that the defendants have proved the Will said to have been executed by the father of the plaintiff?
- ii. Whether the lower appellate court was right in ignoring the fact that there is no mention about the Will in the sale deed executed by the defendants 1 to 3 in favour of the defendant 4?
- iii. Whether the lower appellate court was right in ignoring the material facts that had it been true that the defendant 3 had become the owner by virtue of the Will executed by the father of the plaintiff, there would have been no necessity for the defendants 1 and 2 to have joined in the execution of the same deed? And
- iv. Whether the lower appellate court was right in rejecting the case of the plaintiff?

5. The respective counsels on either side are present and have made their submissions.

6. The learned counsel for the appellant submits that the First Appellate Court committed error in setting aside the



Judgment and Decree dated 24.04.2007 of the Trial Court in entirety in as much as the appeal of the fourth respondent/fourth defendant was only confined to Item No:1 of the Suit Schedule Property. He submits that since the First Appellate Court has set aside the Judgment and Decree of the Trial Court in entirety though the Appeal Suit was confined to Item No:1 of the Suit Schedule Property, the appellant will be satisfied if there is clarification that the impugned Judgment and Decree is operable to Item No.1 of the Suit Schedule Property.

7. Considering the above submissions of the learned counsel for the appellant, it is very clarified that the impugned Judgment and Decree dated 19.09.2014 passed by the First Appellate Court in A.S.No.65 of 2007 shall be confined to Item No.1 of the Suit Schedule Property, namely, the land in S.No.30/1C, S.Naraiyoor Village, Sirumpakkam Sub Registration District, Kallakuruchi Registration District, measuring to an extent of 1.15 Cents.

8. The impugned Judgment and Decree of the First Appellate Court setting aside the Judgment and Decree of the Trial Court in its entirety is therefore modified as above and the impugned Judgment and Decree passed by the First Appellate Court in so far as Item No:1 of the suit schedule properties is confirmed.

9.Thus, this Second Appeal stands dismissed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

drl/jen

To:

1.The Sub ordinate Judge,
Kallakurichi

2.The Principal District Munsif Judge,
Kallakurichi.



Copy To

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

+1cc to Mr.N.Manokaran, Advocate SR.No.31677

S.A.No.125 of 2015
and
M.P.No.1 of 2015

PL (CO)
GN (01/03/2022)