



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.345 of 2007

WEB COPY

Samikkan Jeyaraj
@ Paul Nadar

... Defendant / Respondent / Appellant

-Vs-

1.Nadachi
2.Ponnu
3.Lakshmi
4.Jeyajothi
5.Rajagopal
6.Ponnulingam
7.Selvakumari

... Appellants 2 to 8 / Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned I Additional Sub Judge, Tirunelveli, dated 27.06.2006 in A.S.No.236 of 2005 reversing the judgment and decree of the Principal District Munsif, Valliyoor, dated 06.07.2005 in O.S.No.263 of 2002.

For Appellant : Mr.J.Ashok
For Respondents : Mr.S.Sivathilakar

JUDGMENT

The defendant in O.S.No.263 of 2002 on the file of the Principal District Munsif, Valliyoor is the appellant in this second appeal.

2. The said suit was filed by Sivalinga Nadar against the appellant seeking the relief of permanent injunction. Later, it was amended and he sought the relief of partition of 3/4th share in the third item of the suit schedule. The trial Court, by the judgment and decree dated 06.07.2005 dismissed the suit. Aggrieved by the same, A.S.No.236 of 2005 was filed before the first Additional Sub Court, Tirunelveli. By the impugned judgment and decree dated 27.06.2006, the first appellate Court granted preliminary decree allotting 13/30th share in the third item suit schedule in favour of the legal heirs of the original plaintiff who had in the mean while passed away. Aggrieved by the same, the second appeal came to be filed.

3.The second appeal was admitted on the following substantial questions of law:-

<https://hcservices.ecourts.gov.in/hcservices/>



"1. Whether the lower appellate Court is correct in reversing the well considered judgment and decree of the trial Court without valid reasons?

2. Whether the lower appellate Court is correct in holding that there existed the suit 3rd schedule property without any evidence?

3. Whether the lower appellate Court is correct in holding that the plaintiff is entitled to 13/30th share in the suit third schedule property under Exs.A1 and A2, overlooking the fact that the plea of the plaintiff is his by "Doctrine of Estoppel" in view of Exhibit A9?"

4. When the matter was taken up for final disposal, the learned counsel appearing for the respondents submitted that the respondents may be permitted to withdraw the suit itself with liberty to file a fresh suit seeking the relief of declaration, demarcation and recovery of possession on the same cause of action.

5. In view of the aforesaid submission, the impugned judgment and decree passed by the first appellate Court is set aside. The second appeal is allowed with the aforesaid liberty to the respondents. It goes without saying that the fresh suit that may be instituted by the respondents herein would be disposed of on merits and in accordance with law. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The I Additional Sub Judge, Tirunelveli.
2. The Principal District Munsif, Valliyoore.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2C)

+1 CC to M/s.S.SIVA THILAKAR, Advocate(SR-23540[F] dated 22/07/2021)

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