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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.192 of 2009 and

M.P.(MD)No.1 of 2009

1. M.Ramasamy (Died) ... Appellant/Appellant/ Defendant

2. Santhanammal

3. Selvi

(Appellants 2 and 3 are brought on record as LRs.
of the deceased sole appellant vide order dated
27.08.2020 in M.P.(MD)No.1 of 2012)

... Appellants 2 and 3

Vs.

1. Muthirulan

@ Periya Muthan

... 1st Respondent/1st Respondent/
Plaintiff

2. Mariyammal

... 2nd Respondent/2nd Respondent

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree made in A.S.No.92 of 2005 dated 21.10.2008 on the file of the Sub Court, Srivilliputhur, confirming the Judgment and Decree made in O.S.No.767 of 2004 dated 18.10.2005 on the file of the Additional District Munsif, Srivilliputhur.

For Appellants : Mr.M.Thirunavukkarasu

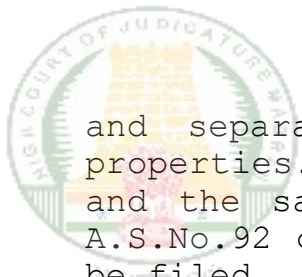
For Respondents : Mr.M.Jothi Basu,
for Mr.G.Marimuthu.

* * *

J U D G M E N T

Heard the learned counsel on either side.

2. The original appellant Ramasamy was the son of the first respondent Muthirulan @ Periya Muthan. The second respondent Mariyammal is the mother of the original appellant. The suit properties are ancestral properties. There is no dispute regarding their character. Some misunderstanding appears to have broken out between the plaintiff and the original appellant. Hence, the father/first respondent herein filed O.S.No.767 of 2004 on the file of the Additional District Munsif, Srivilliputhur, seeking partition



and separate possession in respect of 1/2 share in the suit properties. The trial Court granted preliminary decree as prayed for and the same was also confirmed by the first appellate Court in A.S.No.92 of 2005. Challenging the same, this second appeal came to be filed.

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3. The original appellant passed away during the pendency of the second appeal and his legal heirs have come on record. Though the learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds, I am of the view that the impugned judgment and decree do not call for any interference. This is because the plaintiff/the father had sought only 1/2 share in the suit properties which are ancestral in character. That apart in the written statement itself, the original appellant had taken the stand that he has to be granted 1/2 share in the suit properties and he also paid the Court fee for the same.

4. When the stand of the original appellant was for only 1 /2 share in the suit properties, I do not understand as to why the matter is being contested. The plaintiff and the appellant would take shelter behind the Panchayat Muchalika in which certain kind of arrangement between the parties was worked out. The Courts below held that Ex.B.1 Muchalika was not proved.

5. Exercising jurisdiction under Section 100 of C.P.C., I do not want to interfere with the concurrent finding of the Courts below that Ex.B.1 has not been proved. No substantial question of law arises for consideration. This second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Sub Judge,
Srivilliputhur.



2. The Additional District Munsif,
Srivilliputhur.

Copy to:-

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-22030[F] dated 12/07/2021
)

S.A. (MD) No.192 of 2009
09.07.2021

_RD(22.09.2021) 3P 6C