



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.03.2021

CORAM

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A. (MD) No.813 of 2009

O.V.Krishnaram Babu

...Appellant

Vs.

1.O.S.V.Mohanram (Died)
2.O.V.Srinivasan (Died)
3.O.V.Thulasiram (Died)
4.O.V.M.Sivakumar
5.M.R.MOhanram
6.Radha
7.Amutha
8.O.V.S.Giridhari
9.O.V.S.Ram
10.O.V.T.Menaka
11.Vijayasree
12.Umamaheswari
13.Murugesh

...Respondents

(R8 and R9 are brought on record as LR's of deceased second respondent vide Court order dated 25.02.2020 made in CMP(MD) No.3690 of 2016 in SA(MD) No.813 of 2009 by RSMJ)

(R10 and R13 are brought on record as LR's of deceased third respondent vide Court order dated 15.09.2020 made in CMP(MD) No.3864 of 2020 in SA(MD) No.813 of 2009 by MKKSJ)

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 12.12.2008 in A.S.No.19/2008 passed by the Fast Tract Court No.I, Madurai, confirming the Judgment and Decree dated 27.01.2006 in O.S.No.1238 of 2005, on the file of the I Additional District Munsif of Madurai Town.

For Appellant : Mr.S.Ramesh
R1 to R3 : Died
For R4 to R7 : Mr.K.Samidurai
For R8 to R13 : No appearance



J U D G M E N T

This Second Appeal is directed against the confirming judgment of the Appellate Court made in A.S.No.19 of 2008, dismissing the said appeal, confirming the judgment and decree in O.S.No.1238 of 2005, on the file of the I Additional District Munsif, Madurai Town.

2.The suit was filed by the appellant seeking a decree for permanent injunction restraining the respondents, who are none other than his brothers, by means of permanent injunction from interfering with his possession of the suit property and putting up any unauthorized cross wall affecting the plaintiff's right to possession and from encumbering or alienating the suit property till the award passed by the arbitrators is implemented.

3.Both the Courts below have concluded that such a suit at the instance of one of the sharers is not maintainable. However, in the written statement, it is also stated that the defendants are not putting up any further construction in the suit property. Be that as it may, the very maintainability of the suit is doubtful in view of the prohibition contemplated under Section 41H of the Specific Relief Act. There cannot be a suit for permanent injunction, till such time the property is divided.

4.In the case on hand, even in the year 1978, an award has been passed by the arbitrators under section 17 of the Arbitration Act. Both the courts below have rightly concluded that the plaintiff cannot maintain the suit. The Arbitration OP 76 of 1994 has been directed to be disposed of within a period of three months from today, vide separate order made in CRP(MD)No.941 of 2010. Once, the award made a decree of the Court, the properties will be divided between the parties and as such I do not see any necessity for entertaining this appeal. Even otherwise, I do not see any question of law, much less a substantial question of law in this appeal. This second appeal fails and it is accordingly dismissed without being admitted. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Vrn



To

- 1.The Judge, Fast Tract Court No.I, Madurai.
- 2.The I Additional District Munsif, Madurai Town.

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Copy to

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai(2 copies).

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-14418[F] dated
30/03/2021)

Judgment made in
S.A. (MD) No.813 of 2009
Dated 30.03.2021

tp(CO)

TR(20.04.2021) 3P 6C