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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.745 of 2016  
and  
C.M.P.No.14127 of 2016

1.Ellappa

2.J.Rammiah

3.Munivenkatappa

4.Prakash

...Appellants/Appellants/Defendants

Vs.

1.Minor Sureshbabu son of Ellappa

2.Minor Sarathbabu son of Ellappa  
(Minors 1&2 rep.by mother of natural guardian)

3.Manjula

4.Minor Amaresh son of Ellappa

5.Minor Sivappa son of Ellappa

...Respondents/Respondents/Plaintiffs

Minor 4 & 5 are represented by Court Guardian Advocate Arunan

PRAYER :

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree in A.S.No.28 of 2011, on the file of Additional District Court, Krishnagiri and dated 31.10.2013 in confirming the Judgment and Decree in O.S.No.82 of 2005, on the file of the Sub Court, Hosur dated 24.09.2012.

For Appellants

: Mr.T.Panchatsaram

For Respondents

: M/s.V.Raghavachari  
for R1 to R3



## JUDGMENT

The defendants are the appellants in this Second Appeal.

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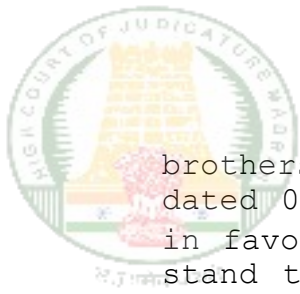
2.The respondents/plaintiffs filed a suit seeking for the relief of payment of monthly maintenance to the plaintiffs and for allotment of 1/20<sup>th</sup> share of the 1<sup>st</sup> defendant in the suit property in favour of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs.

3.The case of the plaintiffs is that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were born to the 1<sup>st</sup> defendant through the legally wedded wife viz. the 3<sup>rd</sup> plaintiff. It is further alleged that the 1<sup>st</sup> defendant illegally married one Dhanalakshmi even when the 1<sup>st</sup> marriage was in subsistence and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were born to the said Dhanalakshmi. They also started staying with the 1<sup>st</sup> defendant. The 4<sup>th</sup> defendant is the father of the 1<sup>st</sup> defendant and the 5<sup>th</sup> and 6<sup>th</sup> defendants are the brothers of the 1<sup>st</sup> defendant.

4.The further case of the plaintiffs is that defendants 1,4,5 and 6 constitute a joint family and the properties in question are the joint family properties.

5.The grievance of the plaintiffs was that the 3<sup>rd</sup> plaintiff was driven out of the matrimonial home and she had taken care of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. They were not even maintained by the 1<sup>st</sup> defendant and the attempt made by him for restitution of conjugal rights also ended in a dismissal. The further grievance of the plaintiffs is that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are entitled for a share in all the properties and in order to defeat the said right, defendants 1,4, 5 and 6 collusively brought about a Partition Deed adverse to the interest of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and therefore, the plaintiffs claimed that they are not bound by the said Partition Deed. It is under these circumstances, the suit came to be filed for the reliefs stated supra.

6.The 1<sup>st</sup> defendant filed the written statement and took a stand that he never indulged in a bigamous marriage with Dhanalakshmi and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were not born to the 1<sup>st</sup> defendant. He also took a stand that he along with his



brothers and father entered into a registered Partition Deed dated 09.05.2005 and a portion of the property was also allotted in favour of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant took a further stand that he is ready to maintain the plaintiffs and that the 3<sup>rd</sup> plaintiff had deserted the 1<sup>st</sup> defendant and gone to her parents' house. The 1<sup>st</sup> defendant also took a stand that he is ready to share the properties allotted to him under the Partition Deed. It is stated that there was no cause of action for filing the suit and accordingly, the 1<sup>st</sup> defendant sought for the dismissal of the suit.

7.The 5<sup>th</sup> and 6<sup>th</sup> defendants filed a written statement and they also took a similar stand in line with the stand taken by the 1<sup>st</sup> defendant.

8.Both the Courts below on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, concurrently held in favour of the plaintiffs and decreed the suit. Aggrieved by the same, the defendants have filed this Second Appeal.

9.Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents.

10.This Court also carefully perused the materials available on record and the findings of both the Courts below.

11.Both the Courts below found that the 1<sup>st</sup> defendant was not maintaining the plaintiffs and was only indulging in initiating court proceedings for restitution of conjugal rights which was also dismissed. The 3<sup>rd</sup> plaintiff was forced to live away from the 1<sup>st</sup> defendant from the year 1993 onwards. The legal proceedings were initiated in the year 1996 and it ended in the year 2004. Immediately thereafter, the Partition Deed Ex. A10 came to be executed among the defendants 1, 4, 5 and 6.

12.Both the Courts found that the properties in question are in the nature of joint family properties and to reach this conclusion, both the Courts relied upon Exhibits A8, A9, A11,A12, A13, A14, A15 and A16 and also took into consideration Exhibits B10 and B11. In view of the same, both the Courts came to a conclusion that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are entitled for a share in the suit properties and that the Partition Deed will



not bind them. Ultimately, the 1<sup>st</sup> defendant was directed to pay monthly maintenance of Rs.1000 to the 3<sup>rd</sup> plaintiff and Rs.500 each to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. A preliminary decree was also passed to the effect that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs will be entitled for 1/20<sup>th</sup> share each in the suit properties.

13.In the considered view of this Court, the findings of both the Courts below does not suffer from any perversity. The same does not warrant the interference of this Court in this Second Appeal. In any event, no substantial question of law is involved in this Second Appeal.

14.In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Additional District Judge,  
Krishnagiri.
2. The Sub Judge,  
Hosur.

Copy to:  
The Section Officer,  
V.R.Section,  
High Court, Madras.

+1cc to M/s.V.Raghavachari, Advocate, S.R.No.27639

S.A.No.745 of 2016  
and C.M.P.No.14127 of 2016

SRA (CO)  
SU(17/05/2022)