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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.413 of 2014
in M.P.No.1 of 2014

Radhakrishnan

...Appellant/Appellant/Plaintiff

Vs.

1.Rama Gounder (Died)

2.Alamelu

3.Saraswathy

4.Seetha

5.Ilayaperumal

6.Ilavarsi

7.Seetharaman

8.Ezhumalai

9.Murugan

10.Sivakandan

11.Chandra

12.Harikrishnan

13.Deivendran

14.Dhanasekaran

15.Mahalakshmi

16.Gowrishankar



17.Krishnamoorthy

18.Sathish

19.Karthikeyan

... Respondents

(R2 to R19 brought as Lrs of the deceased
1st respondent, vide order dated 10.03.2020
in CMP.5018, 5022 & 5024/2020)

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 21.10.2013 passed in A.S.No.135 of 2010 before the Principal Sub Court, Villupuram confirming the judgment and decree dated 05.07.2010 passed in O.S.No.272 of 2008 on the file of Ist Additional District Munsif's Court, Villupuram.

For Appellant : Ms.R.Meenal

For Respondents : M/s.S.Krishnasamy
R.Ramachandra for R2 to R19

JUDGMENT

The plaintiff is the appellant in the present Second Appeal.

2.The case of the plaintiff is that his grand father had three sons namely Balakrishna Gounder, Rama Gounder and Lakshmana Gounder. The further case of the plaintiff is that the suit properties and other properties originally belonged to the joint family consisting of the three brothers. In the year 1983, there was a oral partition between the three brothers and an extent of 5.45 acres was allotted to the share of the first brother and an extent of 5.83 acres was allotted in favour of defendant and an extent of 5.40 acres was allotted in favour of the last brother. According to the plaintiff, they were in possession and enjoyment of the respective shares.

3.It is stated that various alienations took place and the properties mentioned in Schedule A, B and C in the schedule were the ones which were allotted to each of the brother and the "D" Schedule property is the remaining properties that were available after alienation.

4.The grievance of the plaintiff is that the defendant had interfered with the possession and enjoyment of the "D"



Schedule properties. The defendant had contended that the properties were purchased in his name under registered Sale Deed dated 24.07.1982 and an attempt was made by the defendant to cut and carry away the trees that were available in the "D" Schedule properties. Left with no other option, the plaintiff filed the suit seeking for the relief of declaration to declare that he is the owner of the "D" Schedule properties and for a permanent injunction.

5.Both the Courts below on appreciation of the oral and documentary evidence found that the plaintiff did not prove his title over the "D" Schedule properties. The Courts below also found that the plaintiff was claiming for a declaration in an undivided property where the plaintiff at the best can have only 1/3rd share. The Courts below also found that the plaintiff's sister Saroja is also one of the legal heir who is entitled for a share and property and she had not been added as a party in the suit. That apart, the Courts below also found that the plaintiff did not even properly describe the properties in the "D" Schedule by giving proper boundaries.

6.In the considered view of this Court, the findings rendered by both the Courts below are based on appreciation of evidence and this Court does not find any perversity in the findings of both the Courts below. No substantial questions of law are involved in the second appeal.

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

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

ssr

To

1.The Principal Sub Court,
Villupuram.



2.I Additional District Munsif's Court,
Villupuram.

+lcc to M/s.R.Meenal, Advocate SR.No.10460

+lcc to Mr.S.Krishnasamy, Advocate SR.No.10423

S.A.No.413 of 2014
in M.P.No.1 of 2014

CP (CO)
CB (22/03/2022)