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S.A.(MD)No.587 of 2010 & Cross Objection (MD)No.49 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.587 of 2010

and

Cross Objection (MD)No.49 of 2010

and

M.P. (MD)No.2 of 2010

In S.A. (MD)No.587 of 2010

Authorised Officer,
Kamuthi Co-operative Urban Bank,
Kamuthi,
Ramanathapuram District. ... Appellant / 5th Respondent /
5th Defendant

-Vs-

1.Thaikka Muthu ... 1st Respondent / Appellant /
Plaintiff

2.T.K.Abdul Wahab Sahrani ... 2nd Respondent / 1st Respondent /
1st Defendant

3.Taj Nisha ... 3rd Respondent / 2nd Respondent /
2nd Defendant

4.Hasan Banu ... 4th Respondent / 3rd Respondent /
3rd Defendant

5.Hasan Marallia ... 5th Respondent / 4th Respondent /
4th Defendant

6.Deputy Registrar,
Co-operative Societies,
Paramakudi,
Ramanathapuram District. ... 5th Respondent / 6th Respondent /
6th Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 09.10.2009 passed in A.S.No.32 of 2008 on the file of the Principal District Judge, Ramanathapuram reversing that the judgment and decree dated 09.07.2008 passed in O.S.No.18 of 2007 on the file of the Subordinate Judge, Paramakudi.

For Appellant : Mr.Babu Rajendran
For R2, R5 & R6 : No appearance
For R3 & R4 : Mr.P.Santhanakrishnan



In Cross Objection (MD)No.49 of 2010

Thaikka Muthu

... Cross Objector / 1st Respondent in S.A.

Vs.

WEB COPY

1.Authorised Officer,
Kamuthi Co-operative Urban Bank,
Kamuthi,
Ramanathapuram District.

2.T.K.Abdul Wahab Sahrani
3.Taj Nisha
4.Hasan Banu
5.5.Hasan Marallia

6.6.Deputy Registrar,
Co-operative Societies,
Paramakudi,
Ramanathapuram District.

... Respondents 2 to 6 /
Respondents 2 to 6 in S.A.

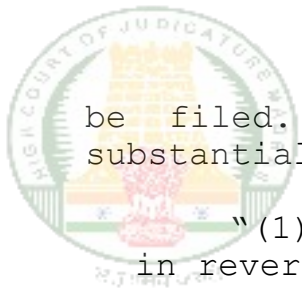
PRAYER: Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code, against the judgment and decree dated 09.10.2009 passed in A.S.No.32 of 2008 on the file of the Principal District Judge, Ramanathapuram confirming the part of the judgment and decree dated 09.07.2008 made in O.S.No.18 of 2007 on the file of the Subordinate Judge, Paramakudi.

For R1 : Mr.Babu Rajendran
For R3 & R4 : Mr.T.Santhana Krishnan

COMMON JUDGMENT

The contesting defendant in O.S.No.18 of 2007 on the file of the Sub Court, Paramakudi, is the appellant in this second appeal.

2. The suit was filed for partition of 7/40th share in the suit property. The appellant herein filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues. After considering the evidence on record, the trial court dismissed the suit as not maintainable vide judgment and decree dated 09.07.2008. Aggrieved by the same, the plaintiff filed A.S.No.32 of 2008 before the Principal District Judge, Ramanathapuram. By the impugned judgment and decree dated 09.10.2009, the first appellate court partly modified the judgment and decree passed by the trial court and partly allowed the appeal. The first appellate court held that the plaintiff is entitled to 7/40th share in the western portion of the suit property covered in Ex.A1 and Ex.A2. Challenging the same, this second appeal came to



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

"(1) Whether the courts below has committed an error of law in reversing the judgment and decree passed by the trial court?

(2) Whether the judgment of the First Appellate Court can be sustained in law when an important piece of evidence is including the mortgage of the property in favour of the appellant has not been considered?"

3. Notice issued to the first respondent/plaintiff Thaikka Muthu was returned with an endorsement 'deceased'. The plaintiff also filed the cross appeal. The learned counsel appearing for the original plaintiff who filed the cross appeal is also no more. This court took up the matter on more than one occasion. Since the plaintiff's legal representatives have not come on record to prosecute the present proceedings, I have to necessarily dispose of the second appeal by recording that the suit itself stood abated. S.A.(MD)No.587 of 2010 is disposed of. Cross.Objection (MD)No.49 of 2010 is dismissed for non prosecution. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Principal District Judge, Ramanathapuram.
- 2.The Subordinate Judge, Paramakudi.

Copy To

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

+1 CC to M/s.BABU RAJENDRAN, Advocate (SR-12245[F] dated 15/03/2022)

Judgment made in
S.A. (MD)No.587 of 2010

and
Cross Objection (MD)No.49 of 2010

and
M.P. (MD)No.2 of 2010

15.03.2022

svs (CO) GC (25.04.2022) 3P 6C

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