



S.A.No.439 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM

THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN

S.A.No.439 of 2009

1. Shanmugam (died)

2. Krishnamurthy (died)

3. Perumal

4. Anjala Devi,

W/o. Krishnamurthy

5. S. Sathiya,

D/O. Krishnamurthy

6. S. Raji,

D/o. Krishnamurthy

...Appellant/Appellant/Plaintiff

(2nd and 3rd appellants are brought on record as legal representatives of the deceased sole appellant vide Order of this Court dated 05.01.2009 in C.M.P.No.2760 and 2761 of 2007)

-VS-

1. Palaniyandi

2. Kaliyamoorthy

3. Ramamurthy

4. Venkatesan



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5. Minor Karthikeyan,
Guardian of Kannan

6.Elumalai (died)

...Respondents/Respondents/Defendants

(Substitution of R6 by his legal representatives is disposed with. Memo recorded vide order of this Court dated 07.03.2023 made in S.A.No.439 of 2009)

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 17.09.2003 in A.S.No.90 of 2001 on the file of the learned II Additional Subordinate Judge, Villupuram, confirming the Judgment and Decree dated 23.03.2001 in O.S.No.569 of 1990 on the file of the learned II Additional District Munsif, Tirukoilur.

For Appellants : Mr.N. Suresh

For Respondents : Mr.T.S.Baskaran
for R1, R2 and R4

JUDGMENT

The grandfather of the appellant by name one Shanmugham filed a suit O.S.No.1569 of 1990 against his brother Palaniyandi and other sharers. The relief sought in the suit is for partition and separate possession. The suit was dismissed on the ground that the properties were already partitioned and the second suit for partition is not



maintainable. Consequently, the suit was dismissed.

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2. When the appeal was taken up for hearing, Mr.T.S Baskaran, learned counsel appearing for the respondents 1, 2 and 4 filed a Memo to the following effect:

"As per the Partition list dated 28.11.1974, the suit items were partitioned in the following manner:

(1) Suit Item - 1: Survey No.114/10 (Total extent 1.50 acres). As per the Partition list, plaintiff and the 1st defendant were each allotted 75 cents.

(2) Suit Item - 2: Was allotted to plaintiff Shanmuagam.

(3) Suit Item - 3: Was allotted to the 1st defendant Palaniyandi.

In respect of Suit Item - 4, the same is the individual property of the 2nd defendant Kaliayamoorthy.

Pending the Second Appeal, the appellants Anjali (wife of Krishnamoorthy, viz., Son of Shanmugam) and



Perumal (Son of Shanmugam) had executed a Release Deed dated 07.10.2013 by releasing their half share in Suit item-1, in favour of the 2nd defendant Kaliyamoorthy. Thus, the 2nd defendant, by virtue of the Release Deed dated 07.10.2013 had become the absolute owner of the suit Item -1."

3.On perusal of the same shows that pending the appeal insofar as Item - 1 of the properties is concerned, the legal heirs of the plaintiff have executed a Release Deed in favour of Kaliyamoorthy, who had already been granted half-a-share in the partition list. In fine, today the said Kaliyamoorthy has become the owner of the suit Item - 1 of the property.

4.The learned counsel appearing for the appellants states that his clients have not contacted him but he has no objection for recording the Memo.



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5.The said Memo is recorded. The partition list between Kaliyamoorthy and the legal heirs of Krishnamoorthy do not exist any more in the light of the execution of the Release Deed dated 07.10.2013. Hence, this Second Appeal is dismissed as infructuous. No costs.

09.03.2023

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

1.The II Additional Subordinate Judge,
Villupuram.

2.The II Additional District Munsif,
Tirukoilur.



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V. LAKSHMINARAYANAN, J,

mps

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