



S.A.Nos.89 and 91 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.Nos.89 and 91 of 2023

Ravichandran

... Appellant in both S.A's

Vs.

Kaliyaperumal (died)

1.Santhi

2.Rani

... Respondents in both S.A's

3.Usharani

...Proposed respondent in both S.A's

4.Ayyappan

...Respondent in S.A.No.91 of 2023

PRAYER in S.A.No.89 of 2023: Appeal filed under Section 100 of Civil Procedure Code, seeking to set aside the decree and judgement in A.S.Nos.11 of 2019 dated 04.02.2021 on the file of the Additional District Court, Mayiladuthurai confirming the decree and judgement in O.S.No.255 of 2017 dated 11.04.2019 on the file of the Principal Sub Judge, Mayiladuthurai.

PRAYER in S.A.No.91 of 2023: Appeal filed under Section 100 of Civil Procedure Code, seeking to set aside the decree and judgement in



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A.S.Nos.10 of 2019 dated 04.02.2021 on the file of the Additional District Court, Mayiladuthurai partly confirming the decree and judgement in O.S.No.161 of 2016 dated 11.04.2019 on the file of the Principal Sub Judge, Mayiladuthurai.

For Petitioner : Mr.R.Shiva Kumar
for K.M.Vijayan Associates

COMMON JUDGMENT

The appellant herein is the plaintiff in O.S.No.161 of 2016, which is laid for partition of 13 items of suit properties, against his father and two sisters. The father had sold the 10th item of property in the partition suit to a third party. Besides, the father of the appellant also laid O.S.No.255 of 2017 for permanent injunction. The trial Court dismissed the appellant's suit for partition and decreed his father's suit for permanent injunction. Challenging the same, the appellant had preferred twin first appeals. The first appellate Court passed a preliminary decree for partition of plaintiff's 1/4th share in all but the 10th item of property. The first appellate Court also dismissed the suit for permanent injunction laid by the father. During the pendency of the appeal, the appellant's father / 1st defendant had passed away. It appears that the father had also executed a settlement deed with regard to some



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properties in favour of his two daughters.

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2.The present appeals are directed against the 10th item of property, regarding which, the appellant /plaintiff was denied any share. According to the appellant, this property was purchased out of the joint family property and he is entitled to a share therein.

3.Heard the learned counsel for the appellant.

4.At the end of the day, the appellant claims only 1/4th share or 25% share in all the items of suit properties. Now, it may enlarge to 1/3rd share but that is largely restricted by settlement deed which 1st defendant father had executed in favour of his daughters. Even if the plaintiff's / appellant's case is accepted, still the purchaser of the 10th item can seek a remedy in equity and demand allotment of 10th item in view of father's share in other items of properties and transfer the benefit to him. These are the matters that have to be worked out in the final decree. To entertain this appeal to consider this



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N.SESHASAYEE, J.

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point is not going to improve the situation procedurally. This Court does not find merit in this appeal.

5. So far as injunction appeal is concerned, one co-sharer cannot seek injunction against the other co-sharers.

6. These second appeals stand dismissed accordingly. The appellant is advised to pursue the final decree proceedings if he is so desirous of obtaining the share in the property by metes and bounds. No costs.

13.03.2023

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Index : yes / no Internet : yes / no
Speaking / Non Speaking order

To.

1. The Additional District Court, Mayiladuthurai
2. The Principal Sub Judge, Mayiladuthurai.

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