



WEB COPY



S.A.No.125 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.02.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.125 of 2023

Ramasamy(died)

1.Sankaran

2.Thamizharasi

3.Kalaiaarasi

4.Revathy

...Appellants

Vs.

Santhappan(died)

1.Sellammal

2.Deepa

3.Elavarasi

4.Kannagi

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 16.02.2022, in A.S.No.11 of 2017 on the file of III Additional District and Sessions Judge, Cuddalore at Vridhachalam, thereby confirmed the judgment and decree dated 22.08.2011 passed in OS.No.8 of 2009 by the Additional Subordinate Judge, Vridhachalam.

For Appellants : Mr.T.Ganesan

JUDGMENT

This second appeal is directed as against the judgment and decree dated 16.02.2022, in A.S.No.11 of 2017 on the file of III Additional



S.A.No.125 of 2023

District and Sessions Judge, Cuddalore at Vridhachalam, thereby confirmed the judgment and decree dated 22.08.2011 passed in OS.No.8 of 2009 by the Additional Subordinate Judge, Vridhachalam.

2. Heard, the learned counsel for the appellants.

3. The appellants are the plaintiffs and the respondents are the defendants. The appellants filed suit for declaration and injunction in respect of 'A' and 'C' schedule properties and in respect of 'B' schedule property, they sought for partition, declaration and injunction. Both the courts below decreed the suit in respect of 'A' and 'C' schedule properties in favour of the plaintiffs. There was no grievance over the judgment and decree for the respondents herein. However, the trial court dismissed the suit in respect of 'B' schedule property. Aggrieved by the same, the plaintiffs preferred appeal suit and the same was also dismissed. Hence, the present second appeal has been filed by the plaintiffs on the following substantial questions of law:

a) Whether the joint patta shows the joint possession and joint enjoyment of the property?

b) Whether the physical structure of the suit



WEB COPY

property taken consideration while proving the joint possession and non-partition of the property?

c) What is the role of the joint patta in deciding the effect of the partition?

4. The only issue raised in this second appeal is that whether 'B' schedule property was already subjected for partition or not. 'B' schedule property is admeasuring 1.12 acres, in which the down portion admeasuring 56 cents was already allotted in favour of the first defendant and thereafter, he had executed settlement deed in favour of his wife i.e. the second defendant by the settlement deed dated 19.09.2008. He also dug up borewell and they are in possession and enjoyment of the same. On perusal of records also revealed that in the year 1975 itself, there was oral partition between the first plaintiff and the first defendant in respect of 'B' schedule property, in which the down portion of the 'B' schedule property was allotted in favour of the first defendant. PW2 to PW4 categorically deposed that there was oral partition in respect of 'B' schedule property even in the year 1980 itself. Accordingly, the down portion was allotted in favour of the first defendant and in turn, he had executed settlement deed dated 19.09.2008 in favour of the second defendant which was marked as Ex.B16.

5. Therefore, this Court does not find any valid reason to interfere



S.A.No.125 of 2023

with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit in respect of 'B' schedule property. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in this appeal.

6. Accordingly, the judgment and decree dated 16.02.2022 in A.S.No.11 of 2017 on the file of III Additional District and Sessions Judge, Cuddalore at Vridhachalam confirming the judgment and decree dated 22.08.2011 passed in OS.No.8 of 2009 by the Additional Subordinate Judge, Vridhachalam is confirmed and this Second Appeal is dismissed. There shall be no order as to costs.

24.02.2023

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

lok



WEB COPY



S.A.No.125 of 2023

To

- 1.The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam
- 2.The Additional Subordinate Judge,
Vridhachalam.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



WEB COPY



S.A.No.125 of 2023

G.K.ILANTHIRAIYAN, J.

lok

S.A.No.125 of 2023

24.02.2023