



S.A.(MD).NoS.367 AND 368 of 2018

WEB COPY

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).Nos.367 and 368 of 2018

and

C.M.P.(MD)No.10331 of 2018

1.Chandran

2.Banumathi

... Appellants in both S.As.,

/Vs./

1.Minnalkodi

2.Rajammal

3.Kodai

4.Geetha alias Thailammai

5.Saraswathy

6.Chelladurai

...Respondents in both S.As.,



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COMMON PRAYER: Second Appeals filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 27.04.2018 in A.S.Nos.41 and 25/2014 on the file of the Subordinate Judge, Paramakudi, in reversing the judgment and decree dated 09.12.2013 in O.S.No.93/2010 on the file of District Munsif, Paramakudi.

For Appellants

in both S.As., : Mr.S.Ramesh

For R1 to R5

in both S.As., : Mr.S.Rajasekar

For R6 : No appearance

COMMON JUDGMENT

The plaintiffs and the first defendant are the children of Govindhan Pillai. The plaintiffs are the daughters and the first defendant is the son. The third defendant is the subsequent purchaser from the first defendant. The second defendant is the husband of the third defendant. Hence, the defendants 2 and 3 are subsequent purchasers through the first defendant.



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For the sake of convenience, the parties shall be referred as Plaintiff and Defendants based on the ranking in the suit.

2. The daughters have filed the suit for partition to divide 11 items belonging to the family. The suit was decreed allotting 5/12 share to the daughters. Aggrieved over the same, the defendants 2 and 3, the subsequent purchasers had filed the first appeal and the daughters had preferred cross appeal before the First Appellate Court, wherein the First Appellate Court had rendered a reversed judgment and granted equal share to all the 6 children of Govindhan Pillai, allotting 5/6 share to the daughters and 1/6th share to the son. Aggrieved over the same the present second appeal is filed by the defendants 2 and 3.

3. The contention of the defendants 2 and 3 is that the 1st item of the suit property was already sold to them on 24.01.2007 and subsequent to the sale only the suit for partition is filed on 12.07.2010. Since the sale of the 1st item of the suit property is prior to the partition, the sale is genuine and the third defendant is the *bona fide* purchaser. But both the



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Courts without taking the fact of sale prior to suit, have come to the conclusion that the 1st item of suit property is available for partition, which is erroneous and hence prayed to modify the judgment as far as 1st item is concerned.

4. After hearing the arguments this Court had given its anxious consideration. The 1st defendant before selling the property ought to have disclosed that he has five siblings and their interest in involved in the suit property. Since the same was not disclosed then the defendants 2 and 3 ought to be considered as bonafide purchasers and their rights ought to be protected.

5. The second appeal is preferred against the preliminary decree. While considering final decree the Courts below shall protect the rights of the bonafide purchasers and divide the shares accordingly.



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6. For the aforesaid reasons, these Second Appeals are disposed of with the direction stated supra, confirming the judgment and decree dated 27.04.2018 in A.S.Nos.41 and 25 of 2014 on the file of the learned Subordinate Judge, Paramakudi. No costs. Consequently, connected Miscellaneous Petition is closed.

24.11.2023

Index : Yes / No

NCC : Yes / No

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TO:

- 1.The Subordinate Judge, Paramkudi,
- 2.The District Munsif, Paramakudi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Common Judgment made in
S.A.(MD).Nos.367 and 368 of 2018

Dated:

24.11.2023