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S.A.(MD)No.481 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A.(MD)No.481 of 2023

Rajam

... Appellant/Plaintiff

Vs.

1.Rajamony

... 1st Respondent/1st Defendant

2.Sarasam

3.Sundarraaj

... Respondent Nos.2 & 3 /
Defendant Nos.2 & 3

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, 1908, against the judgment and decree passed in A.S.No.56 of 2009 on the file of the Subordinate Judge, Padmanabhapuram dated 21.02.2013 partly confirming the judgment and decree passed in O.S.No.82 of 2004 on the file of the Principal District Munsif Court, Padmanabhapuram dated 30.01.2009.

For Appellant : Mr.C.K.M.Appaji



JUDGMENT

This Second Appeal is filed against the judgment and decree dated 21.02.2013 passed in A.S.No.56 of 2009 on the file of the Subordinate Judge, Padmanabhapuram, partly confirming the judgment and decree dated 30.01.2009 passed in O.S.No.82 of 2004 on the file of the Principal District Munsif, Padmanabhapuram.

2. The brief facts of the case:

The appellant is the plaintiff in O.S.No.82 of 2004 on the file of the Principal District Munsif Court, Padmanabhapuram. She has filed the said suit for partition against the defendants 1 to 3. Defendants 1 and 2 are the brother and sister of the plaintiff and the third defendant is the husband of the plaintiff. The defendants filed a detailed written statements. Both side let in oral and documentary evidences. After hot contest, the Trial Court partly decreed the suit. Aggrieved by the judgment and decree of the Trial Court, the first defendant filed Civil Appeal in A.S.No.56 of 2009 before the First Appellate Court/Subordinate Court, Padmanabhapuram. The First Appellate Court, after considering both side arguments and both side evidences, partly allowed the appeal and decreed the suit as prayed for by the plaintiff.



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3. Heard the learned counsel for the appellant and perused the records.

4. The learned counsel for the appellant/plaintiff has argued that there are five items of suit properties, the item Nos.1 to 4 are ancestral properties of the plaintiff's father and the 5th item No.5 is self acquired property of the plaintiff's father. The plaintiff and the defendants 1 and 2 are brother and sisters. The plaintiff filed the suit seeking partition of 1/9th share in item Nos.1 to 4 and 1/3rd share in item No.5 of suit properties. The Trial Court came to the conclusion that the plaintiff and the defendants 1 and 2 are entitled to 1/3rd share each in item Nos.1 to 5 of suit properties. But, the trial Court partly decreed the suit that the plaintiff is entitled to 1/9th share in all item Nos.1 to 5 of suit properties. The first defendant preferred the appeal in A.S.No.56 of 2009 before the Sub Court, Padmanabhapuram. The First Appellate Court came to conclusion that the plaintiff is entitled 1/3rd share in the 5th item, but partly allowed and decreed that the plaintiff is entitled 1/3rd share in 5th item and confirmed the decree of trial Court that the plaintiff is entitled 1/9th share in item Nos.1 to 4. Though the First Appellate Court decreed



the suit as prayed for, but the Trial Court came to the conclusion that the plaintiff and the defendants 1 to 3 are entitled to 1/3rd share in all items Nos.1 to 5. Therefore, the plaintiff has fair chance in this Second Appeal. Therefore the Second Appeal may be admitted to file.

5. On hearing the learned counsel for the appellant and on perusal of records, it is clear that the plaintiff filed the original suit in O.S.No.82 of 2004 before the Principal District Munsif Court, Padmanabhapuram seeking the reliefs of partition of 1/9th share in the item Nos.1 to 4 of suit properties and 1/3rd share in the item No.5 of suit properties. The plaintiff herself has admitted in her evidence that she filed the suit for partition seeking 1/9th share in item Nos.1 to 4 and 1/3rd share in 5th item of suit properties. On perusal of records, the Trial Court has passed decree and judgment that the plaintiff is entitled 1/9th share in all items Nos.1 to 5 and thereby partly decreed. Being aggrieved the first defendant filed appeal in A.S.No.56 of 2009 against the decree and judgment of the Trial Court. But, unfortunately the First Appellate Court decreed the suit in granting entire reliefs as prayed for the plaintiff and negative the defendants. That is, the plaintiff's prayer in the main suit who sought 1/9th share in items Nos.1 to 4 and 1/3rd share in the 5th item. So, the



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relief sought for the plaintiff is fully granted by the First Appellate Court.

Admittedly, against the judgment and decree of the First Appellate Court, the first defendant has preferred the Second Appeal in S.A.(MD) No.528 of 2013 before this Court and the same is pending. Now, the appellant/plaintiff has preferred this Second Appeal after lapse of 10 years against the judgment and decree in A.S.No.56 of 2009 of Subordinate Judge, Padmanabhapuram contending that the Trial Court came to the conclusion that the plaintiff and the defendants 1 and 2 are entitled to 1/3rd share each in all the items Nos.1 to 5 of suit properties, but decreed only 1/9th share in the properties. It is not the case that subsequent to the filing original suit, the plaintiff sought relief of partition 1/3rd share in item Nos.1 to 4 also from the date of her plaint and till the disposal of the 1st appeal or till the date of filing of this Second Appeal. The plaintiff admitted that she sought only 1/9th share in item Nos.1 to 4 of suit properties as they are ancestral properties. Now, beyond the relief of 1/9th share sought for by her, she filed this Second Appeal seeking 1/3rd share, which is not maintainable as her relief sought in the original suit is fully granted by the Courts below. In such circumstances, the appellant/plaintiff has no valid ground to file Second Appeal or any question of law in her favour. Considering the facts, there is *prima facie* no question of law arisen in this Second Appeal in favour



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of the appellant/plaintiff. Therefore, considering the above facts and circumstances, this Court is of the opinion that this Second Appeal is liable to be dismissed in the admission stage itself.

6.In the result, as there is no substantial question of law involved in this appeal, this Second Appeal is dismissed at the admission stage itself. No costs.

21.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
vsd

To

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



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P.VADAMALAI, J.

vsd

ORDER MADE IN
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