



S.A.No. 277 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 277 of 2021
&
C.M.P.No. 5507 of 2021

1.Logammal

2.Soundar

3.Velu

4.Bhavani

5.Jayasankar

6.Jayanthi

7.Malathi

8.Rajinikanth

...Appellants

Vs.



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1.Krishti (Died)

2.Selvi

3.Uma

4.Maithili

5.Pazhanivel

6.Sumathi

7.Kantha

8.Revathi

...Respondents

(R1 died R2 to R6 who are already on record are recorded as LR's of the deceased R1 vide order of the Court dated 22.02.2024 made in S.A.No.277 of 2021 and C.M.P.No.5507 of 2021).

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.35 of 2016 dated 23.07.2019 on the file of the Court of Principal District Judge, Cuddalore, and the Decree and Judgement passed in I.A.No.277 of 2008 in O.S.No.29 of 2002 dated 21.02.2014 on the file of the Sub Judge, Panruti.



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For Appellants : Mr. T.Thiyagarajan

J U D G M E N T

The defendants in a suit for partition are the appellants before this Court. The facts are briefly set out herein below. The sole plaintiff had filed the suit for declaring right of the plaintiff and the defendants 4 and 5 to the suit A Schedule property and to declare their right to recover of possession of the same, declare 4/9th share in the suit A Schedule property by passing preliminary decree for partition and separate possession.

2. The Second Appeal arises against the Judgement and Decree in A.S.No.35 of 2016 by the Principal District Judge, Cuddalore, in and by which the learned Judge had confirmed the Judgement and Decree in I.A.No.277 of 2008 in O.S.No.29 of 2002 passed by the Sub Judge, Panruti.



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3. The records would show that the preliminary decree for partition of the plaintiff's 4/9th share in the suit property had been granted by the learned Sub Court, Panruti in O.S.No.29 of 2002 on 11.08.2005. Thereafter, the plaintiff had filed I.A.No.277 of 2008 in O.S.No.29 of 2002 for passing of final decree. Pending the petition, the sole plaintiff had died and his legal representatives were brought on record as petitioners 2 to 7.

4. It is seen that the defendants have not challenged the preliminary decree. That apart, in the final decree proceedings, the appellants herein had not filed their counter. Ultimately, the Advocate Commissioner who had been appointed had visited the suit property, measured the same by metes and bounds and filed his report and plan. On hearing the submissions and taking into account the Advocate Commissioner's report, the learned Judge had also



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proceeded to pass the final decree. The objection raised by respondents 2, 3, 6 to 12 in the final decree petition was rejected. As per the final decree the A schedule property was allotted to the plaintiffs.

5. The Lower Appellate Court held that the appellants herein had not shown as to how the final decree was perverse, more particularly when they had not even submitted their counter to the final decree proceedings. Therefore, the Appeal was dismissed and against this order, that the present Second Appeal is filed.

6. Taking into account the fact that the defendants had neither challenged the preliminary decree nor participated in the final decree proceedings by filing a counter, it is clear that the appellants / defendants are not serious in their contest. The defendants have not even filed their objections to the Advocate Commissioner's report. The Advocate Commissioner has suggested partition only after



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visiting the suit property and taking into consideration the over all lie of the property. The defendants who have not seriously contested the proceedings before the Trial Court cannot seek to have the decree set aside in the Second Appeal, particularly when no grounds have been made out for the same. That apart, there is no substantial question of law raised in the Second Appeal.

7. In the result, the Second Appeal is dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

1.The Principal District Judge,
Cuddalore.

2.The Sub Judge,
Panruti.



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P.T. ASHA, J,

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