



S.A.No.1291 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

S.A.No.1291 of 2013 and

M.P.No.1 of 2013

Subramani

...Appellant

-Vs-

1. Vasantha Devi
2. Gandhimathi
3. Krishnamurthy
4. Jayalakshmi
5. S.Sivakumar
6. Dhanalakshmi

...Respondents

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 16.11.2012 made in A.S.No.14 of 2012 on the file of the learned Principal District and Sessions Judge, Erode, reversing the judgment and decree dated 21.09.2011 made in O.S.No.71 of 2010 on the file of the Sub Court, Erode.

For Appellant : M/s.M.Guruprasad

For Respondents : Mr.V.Ayyadurai,
Senior Counsel
for Mr.P.Muthukumar
for R1, 3 and 6



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ORDER

WEB COPY When the case came up for hearing on earlier occasion, the learned Senior Counsel M/s.Ayyadurai, appearing for the Respondent submitted that the Second Appeal does not arise in this case as the first Appellate Court had dismissed the suit granting liberty to the Plaintiffs as well as the first Defendant to workout remedy by proper partition of all the properties of the family including the property already alienated by the Plaintiff in O.S.No.438 of 2005 impleading the purchaser as necessary party.

2. The suit filed by the Plaintiff seeking bare injunction and alternative relief for partition, subsequently amended seeking declaration of title and bare injunction. Consequently in the alternative for partition. After hearing the arguments elaborately on both sides, the Court had adjourned the case with a request to the learned Senior Counsel instead of directing the parties to file a fresh suit whether this Court can grant relief of partition.

3. Today, 24.06.2024, the learned Senior Counsel had furnished the reported decisions of the Hon'ble Supreme Court in the case of *Anathula*



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Sudhakar -vs- P.Buchi Reddy (Dead) by lrs and others reported in

2008(4) Supreme Court Cases 594, particularly in Paragraph 28, which is

held as follows:

"The third question of law formulated by the High court, is also a mixed question of fact and law-firstly, whether there was an oral gift and secondly, whether the alleged oral gift was valid. Here again, there was no averment in the plaint in respect of any gift, oral or otherwise, by Damodar Rao in favour of Rukminibai or about its validity. Consequently, there was not opportunity to the defendant to deny the oral gift in his written statement. There was no issue on this aspect also. Therefore, this question, which could not have been considered in the suit, could not also have been considered in the second appeal".

4. In the light of the observation of the Hon'ble Supreme Court, without pleadings, this Court cannot grant such relief. Therefore in the light of the above, the Second Appeal is to be dismissed. Accordingly, the Second Appeal is dismissed. Consequently connected miscellaneous petition is closed. No costs.

24.06.2024

shl

Index : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

shl

To

1. The Principal District and Sessions Judge,
Erode.
2. The Principal Sub Judge,
Erode.

S.A.No.1291 of 2013 and

M.P.No.1 of 2013

24.06.2024