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OSA NO.50 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**OSA NO.50 OF 2019
AND
CMP NO.5163 OF 2019**

S.Sivakumar

... Appellant

Vs.

1.S.Karunakaran
2.S.Kribakaran
3.S.Mohan
4.S.Harishankar
5.K.Renuka W/o.Krishna Murthy
6.N.Selvapathy
7.N.Sakuntla W/o. Nandagopal

... Respondents

PRAYER: Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent, praying to set aside the decree and judgment dated 19.12.2008 passed in C.S.No.1021 of 2008 by the learned Judge.

For Appellant	:	Mr.N.Nagu Sah
For Respondents 1-5	:	Ms.R.T.Sundari
For Respondents 6&7	:	No appearance



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J U D G M E N T

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(Judgment of the Court was made by R.SUBRAMANIAN, J.)

This appeal at the instance of the third party challenging a consent decree that has been granted declaring the title of the respondents 1 to 5 to the suit property.

2. According to the respondents 1 to 5, the suit property originally belonged to one Janakambal D/o. Angamuthu Naicker and Rajammal. It is also claimed that the suit property was purchased out of the Sridhana funds of Janakambal on 17.03.1962. The said Janakambal died on 05.01.1997. A claim was made that Janakambal has executed a registered WILL dated 27.06.1989 and proceedings for grant of Letters of Administration were launched in T.O.S.No.19 of 2000, which came to be dismissed on the ground that the execution and attestation of the WILL has not been proved properly. An appeal against the said dismissal also met with the same fate. Thereafter, the respondents 1 to 5 launched the present suit in C.S.No.1021 of 2008 claiming that the property having been purchased by Janakambal out of her Sridhana funds and she having died without issues, intestate would revert to the heirs of the father of



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Janakambal and the respondents 1 to 5 being the heirs of the father of Janakambal are entitled to the property absolutely. The appellants who claim that his father was adopted by Janakambal was not made as a party to the said suit. The suit was filed against the maternal uncle and aunt of the respondents 1 to 5 who figure as respondents 6 and 7 in this appeal. Since the respondents 6 and 7 in this appeal submitted to a decree, a consent decree came to be passed by this Court, the appellant has come up with the present appeal.

3. Admittedly, the appellant is a third party to the suit. What has been granted is a decree for declaration of title based on a consent by the respondents 6 and 7 in this appeal. If the appellant has any right over the property, as the adopted son of Janakambal, the appellant has to first prove the adoption before he could challenge this decree. It is therefore clear our mind that the appellant cannot maintain this appeal and it is for him to launch separate proceedings seeking a right over the property, in which he could establish the adoption as claimed by him. If the appellant is to launch any separate proceedings, this decree will not stand in the way.

4. With the above observations, this appeal is dismissed. No



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costs. Consequently, connected miscellaneous petition is closed.

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[R.S.M., J.]

[R.S.V., J.]

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Index : No
Internet : Yes
Neutral Citation : No
Speaking Order
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