



S.A.(MD)No.15 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.15 of 2017

and

C.M.P.(MD)No.353 of 2017

and

C.M.P.(MD)No.9308 of 2024

Easwari

... Appellant

(Cause title is accepted vide order dated 02.11.2016 made in C.M.P.(MD)No.4889 of 2016 in S.A.(MD)No.SR5728 of 2016 by SSSRJ).

Vs.

1.Krishna Konar

2.Subbaiah Konar (Died)

Pathamadai Sankara Iyer Mani (Died)

3.Lakshmi Gopalakrishnan

4.Vidhya Sankar

5.Nambiyammal

6.Ganapathi

7.Natchiyar

... Respondents

(Respondents 5 to 7 are brought on record as LR's of the deceased 2nd respondent vide order dated 07.08.2023 made in C.M.P.(MD)Nos.8342, 8344 and 8346 of 2023 in S.A.(MD)No.15 of 2017 by CKJ)



S.A.(MD)No.15 of 2017

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree of the Lower Appellate Court dated 26.06.2015 passed in A.S.No.64 of 2011 on the file of the Subordinate Judge, Ambasamudram, reversing the judgment and decree of the Trial Court dated 04.07.2011 passed in O.S.no.82 of 2007 on the file of the District Munsif cum Judicial Magistrate, Cheranmahadevi and to allow the second appeal.

For Appellant : Mr.R.Subramanian

For Respondents : Mr.H.Arumugam for R1, R5 & R7
Mr.S.Packiyamuthu for R6
No appearance for R3 & R4

JUDGEMENT

Krishna Konar and Subbaiah Konar filed O.S.No.82 of 2007 on the file of the District Munsif Court, Cheranmahadevi against Srinivasan and Mani. It was a suit for permanent injunction. The suit was dismissed on 04.07.2011. Aggrieved by the same, the plaintiffs filed A.S.No.64 of 2011 on the file of the Sub Court, Ambasamuram. During the pendency of the appeal, Mani passed away. The legal heirs of Mani were not brought on record. Thus, the appeal stood abated as against the deceased second defendant (Mani). In this view of the matter, the decree of the trial Court could not have been reversed in toto. To this extent, the judgment and decree dated 26.06.2015 passed by Sub Court, Ambasamudram is not correct. Be that as it may, the decree was granted only against the first defendant / Srinivasan. Aggrieved by the judgment and decree



S.A.(MD)No.15 of 2017

passed by the first appellate Court, Easwari one of the daughters of Srinivasan filed this second appeal. Her siblings are shown as respondents 3 and 4. It is interesting to note that Easwari alone filed this second appeal and her siblings did not join her.

2.During the pendency of this second appeal, Easwari and the contesting respondents entered into compromise and they have filed joint compromise memo dated 15.07.2024. To record the same, C.M.P.(MD)No.9308 of 2024 has also been filed and the same is allowed.

3.Easwari has also filed an undertaking affidavit stating that if her siblings make any claim over the suit property in future, she will satisfy the same from out of the property allotted to her as per the compromise memo. The joint compromise memo dated 15.07.2024 shall part of the decree.

4.The second appeal is disposed of accordingly. No costs. Consequently, C.M.P.(MD)No.353 of 2017 is closed.

23.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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S.A.(MD)No.15 of 2017

G.R.SWAMINATHAN, J.

ias

To:

1.The Sub Court,
Ambasamudram.

2.The District Munsif Court,
Cheranmahadevi.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

S.A.(MD)No.15 of 2017

23.08.2024