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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06-01-2025**

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THE HONOURABLE MR JUSTICE S. S. SUNDAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

OSA No. 216 of 2024

B.Vikram Raaj
S/o.Late Bhaskaran

Vs

Appellant

1.S.Prashanth
S/o.Late P.Srinivas,

2.S.Preethi,
D/o.Late P.Srinivas

Respondent(s)

Prayer : Original Side Appeal is filed under Order 36 Rule 1 of O.S Rules read with Clause 15 of Letters Petent to set aside the preliminary decree and judgment dated 03.04.2024 made in C.S.No. 74 of 2022.

For Appellant(s): Mr. R Sidharth

For Respondent(s): Mr. S.K.Mageshwaran

JUDGMENT

(Judgment of the Court was made by the Hon'ble S.S.Sundar J.)

The present appeal is filed on the sole ground that the suit was disposed of without conducting a trial and without giving the appellant



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/defendant an opportunity to put forth the stand taken in the written statement.

2. The respondents/plaintiffs have filed a suit in C.S.No. 74 of 2022, seeking a preliminary decree for a 1/4 share of each of the plaintiff in the suit schedule property and a division by metes and bounds. After framing issues, evidence was recorded, and the Court found no tribal issues. The facts had not been specifically denied and the defendant's right alone had been asserted. The right of the defendant to claim 1/2 share was not denied or disputed by the plaintiffs/respondents. Therefore, the trial Court found that the plaintiffs were entitled to partition of the suit property.

3. Challenging the preliminary decree, declaring/ granting 1/4 share to each of the plaintiff in respect of item nos.1 to 3 in the schedule, this appeal is filed by the defendant/appellant.

4. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.



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5. Learned counsel for the appellant referred to the written statement and submitted that the question whether there were any oral partition between the family of the plaintiffs and defendant was not considered by the learned Judge while granting preliminary decree infavour of the plaintiffs/respondents. Learned counsel for the appellant has argued that a oral partition was effected among the family members of the plaintiffs and the defendant on 13.11.2006. In paragraph 6 of the written statement , it is stated as follows;

“This defendant further submits that his Grand Mother Mrs.R.Lalitha along with his mother Mrs.Parimala Rajagopal and his aunty Mrs.Sarala Srinivasan (Plaintiffs' mother) on 13.11.2006 orally entered into a partition in respect of schedule mentioned properties and also gave effect to the said partition on that day itself and took up constructive possession of their respective shares.”

6. But surprisingly, it is brought to the notice of this Court by the learned counsel for the respondent/plaintiff that two of the suit properties were purchased in the name of R.Latha, by registered sale



deeds (Document No. 6298/2006, dated 22.12.2006 and Document No.6299/2006, dated 22.12.2006).

7. Upon analysing the evidence and arguments presented, it is evident that the only defence based on oral partition dated 13.11.2006, as put forth by the appellant/defendant, lacks merits. This Court finds no merit in the appeal, as the sole defence taken in the written statement is unsustainable. There is no evidence let in to prove oral partition. Since the alleged oral partition as pleaded is knowingly false, this Court find no bonafide or merits in this appeal.

8. Having regard to the admitted facts, this appeal is devoid of any merits. Accordingly, the appeal is dismissed.. No costs.

(S.S.SUNDAR J.) (P.DHANABAL J.)
06-01-2025

Index : yes/No
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