

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1298 of 2014

1.Sarasu
2.Selvi
3.Chandrasekaran
4.Eswari
... Appellants/Appellant(in A.S)
Vs.

1.Kunjammal
2.Nagarajan
3.Pappayammal
4.Nallammal
5.Kesavan
6.Rani
7.Valarmathi
8.Poulraj
9.Annapoorani
...R1 and 2/R5 and R6/Plaintiffs 5 and 6
...R3/R3/3rd Defendant
... Respondents 4 to 9/R9 to 14(in A.S)

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the decree and judgement of the learned Subordinate Judge at Sankari dated 19.09.2013 in A.S.No.16 of 2007 confirming the judgement and decree of the learned District Munsif, Sankari dated 28.02.1991 in O.S.No.327 of 1988.

For Appellant : Mr.P.Valliappan
For RR5 to 9 : Mr.N.Manokaran

JUDGEMENT

The suit in O.S.No.394 of 1985 was originally filed by one Mr.Kandasamy Gounder on the file of the learned District Munsif, Tiruchengode. It was later on transferred to the file of the learned District Munsif, Sankari and re-numbered as O.S.No.327 of 1988. There were three defendants in the said suit by name Mrs.Velayee, Mr.Muthusamy and Mrs.Pappayammal. During the pendency of the suit, Mr.Kandasamy Gounder, the sole plaintiff died and therefore, the plaintiffs 2 to 4 were impleaded as his legal representatives. Subsequently, the added third plaintiff Mr.Marappan also died. Therefore, his legal representatives were added as plaintiffs 5 and 6 in the suit. The suit is for partition of 1/6th share. The claim was made on the basis of the sale deed dated 19.08.1976 executed by one Mr.Subbu @ Sellappa Gounder who is the father of the defendants 2 and 3 and husband of first defendant in favour of Mr.Kandasamy Gounder. The suit was decreed as prayed for. As against the same, an appeal was filed by the defendants. When the First Appeal was pending, the second defendant Mr.Muthusamy also passed away. The appellants herein

were added as appellants 2 to 5 in the first Appeal as the legal representatives of Mr.Muthusamy. The first defendant Mrs.Velayee who was arrayed as the 7th respondent in the First Appeal also passed away. In her place, her legal representatives were added as respondents 9 to 12. The second respondent in the First Appeal Mr.Ammasi @ Muthu Gounder also died during the pendency of the First Appeal and therefore, his legal representatives namely respondents 13 and 14 were added in the place of Mr.Ammasi @ Muthu Gounder. The First Appellate Court by decree and judgement dated 19.09.2013 dismissed the said appeal. Challenging the same, the appellants are before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellants and the learned counsel for the respondents 5 to 9 and I have also perused the records carefully.

3.According to the case of the plaintiffs, Mr.Subbu @ Sellappa Gounder had undivided 1/6th share in the suit property, which he duly conveyed under Ex.A.1 sale deed dated 19.08.1976 and thus, the plaintiffs are entitled to a decree for partition of 1/6th share.

4.The second defendant contended before the trial Court that the alleged sale deed dated 19.08.1976 (Ex.A.1) executed by Mr.Subbu @ Sellappa Gounder in favour of Mr.Kandasamy Gounder is sham and nominal and it was never intended to be acted upon. Thus, according to the second defendant, based on the above sale deed dated 19.08.1976 (Ex.A.1) the plaintiffs are not entitled for a decree of partition.

5.Based on the above pleadings, the trial Court framed appropriate issues and called upon the parties to let in evidence both oral as well as documentary evidence. On the side of the plaintiffs as many as one witness was examined and 7 documents were exhibited. On the side of the defendants as many as two witnesses were examined and 6 documents were exhibited.

6.Having considered the above, the trial Court decreed the suit which was confirmed by the First Appellate Court. That is how the appellants who are the legal representatives of second defendant are before this Court with this second appeal.

7.In this second appeal, it is contended that the sale deed under Ex.A.1 is sham and nominal and the plaintiffs have failed to prove the validity of the said document. It is also contended by the learned counsel that in the earlier suits in O.S.Nos.425 & 439 of 1976, the learned District Munsif, Sankari has held that possession was not taken by the plaintiffs by establishing their title under the said sale deed. From the said finding, according to the learned counsel for the appellants, it is crystal clear that the sale deed dated 19.08.1976 (Ex.A.1) is sham and nominal document.

8.I have considered the above submissions.

9.The question whether the alleged sale deed dated 19.08.1976 (Ex.A.1) is a sham and nominal document, or, a valid document, is a pure question of fact. The Courts below have concurrently held that the said document dated 19.08.1976 (Ex.A.1) was intended to be acted upon.

10.The learned counsel for the appellants would submit that in the earlier suits mentioned above, the Court below has held that based on the above document, possession was not taken by the purchaser namely Mr.Kandasamy Gounder.

11.In my considered opinion, the said issue has been appreciated by the Courts Below to say that since, the entire property had not been purchased and since only undivided 1/6th share alone purchased, there would not have been no occasion for Mr.Kandasamy Gounder to take possession. Assuming that possession was not taken by Mr.Kandasamy Gounder, that would not go to prove that the sale deed dated 19.08.1976 (Ex.A.1) is sham and nominal. The defendants have to prove the same by way of evidence. The reasons as to why the document was executed and what was the animus of the parties when the document was created, are all questions of fact which have been considered by the Courts below. In this case, the Courts below have held that the defendants have failed to prove that the document in question namely Ex.A.1 is a sham and nominal document.

12.The contention of the learned counsel for the appellants that the burden is upon the plaintiffs to prove that the sale deed dated 19.08.1976 (Ex.A.1) is valid, cannot be accepted because, as per Section 101 of the Indian Evidence Act, the burden is only upon the person who sets up a plea of sham and nominal transaction. Here, in this case, the defendants have failed to prove the same. The Courts below have appreciated the facts as well and have come to the conclusion that the document dated 19.08.1976 (Ex.A.1) is valid and therefore, the plaintiffs are entitled for a preliminary decree of 1/6th share.

13.In view of all the above, the decree and judgement granted by the trial Court and confirmed by the First Appellate Court does not require any interference at the hands of this Court since, absolutely, there is no question of law involved in this matter.

14.In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost.

Sd/-
Assistant Registrar

//True Copy//

To

1.The Subordinate Judge,
Sankari.

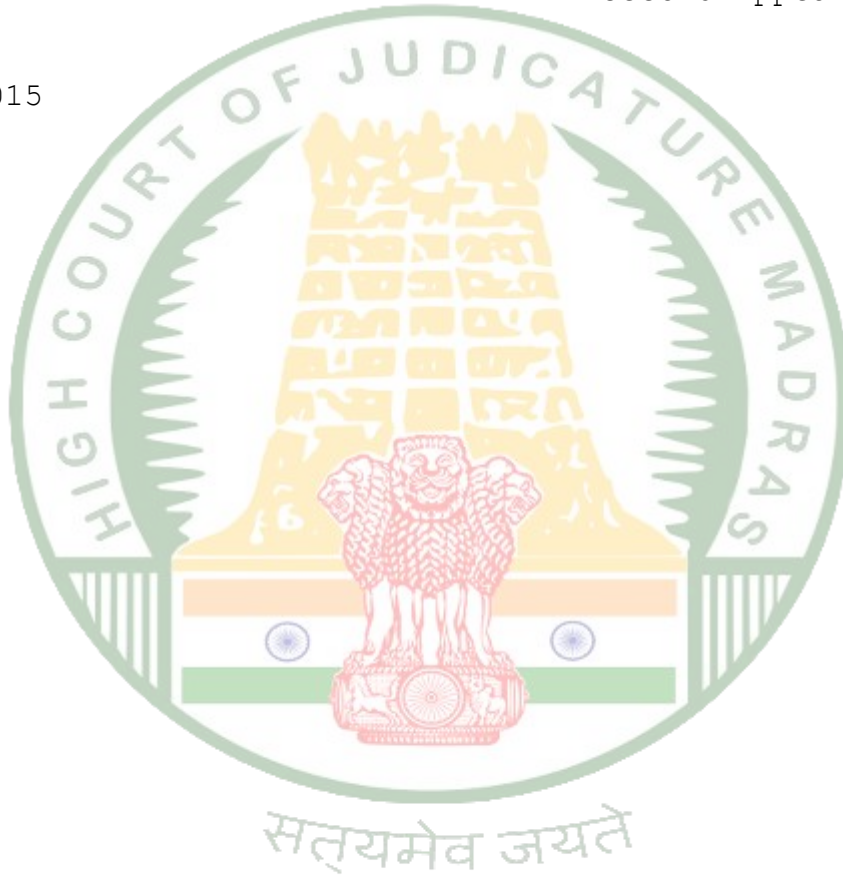
2.The District Munsif,
Sankari.

1 cc to Mr. P.Valliappan,Advocate, SR.No.6153

1 cc to Mr. N.Manokaran,Advocate, SR.No.5974

Second Appeal No.1298 of 2014

ssi(co)
pmk.1.6.2015



WEB COPY