

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.877 of 2014 and
M.P.No.1 of 2014

A.Sundararajan

... Appellant/I Defendant

Vs.

1.Santhosh Kumar

...1st Respondent/Plaintiff

2.Lakshmi

3.Revathi

4.Bharathi

5.Manimegalai

... Respondents 2 to 5
/Defendants 3 to 6

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement dated 29.06.2012 in A.S.No.16 of 2012 on the file of the learned II Additional District Judge, Salem confirming the judgement and decree dated 03.06.2011 in O.S.No.37 of 2008 on the file of the learned Principal Subordinate Judge, Salem.

For Appellants : Mr.D.Shivakumaran

For Respondents : Mr.T.M.Hariharan

JUDGEMENT

The first defendant in O.S.No.37 of 2008 on the file of the learned Principal Subordinate Judge, Salem is the appellant herein. The first respondent herein is the first defendant in the suit. One Mr.Venkatachalam was the second defendant in the suit. Mr.Venkatachalam died during the pendency of the suit. Therefore, the respondents 2 to 5 herein were impleaded as his legal representatives i.e., as defendants 3 to 6 in the suit. The said suit is for declaration of title and for recovery of possession of the suit property. The learned Principal Subordinate Judge, by decree and judgement dated 03.06.2011 decreed the suit as prayed for. As against the same, the appellant herein filed an appeal in A.S.No.16 of 2012 on the file of the learned II Additional District Judge, Salem. The learned II Additional District Judge, Salem dismissed the appeal thereby confirming the decree and judgement of the trial Court. Aggrieved over the same, the appellant/first defendant in the suit is before this Court with this second appeal.

2.Notice sent to the respondents 3 to 6 herein have not been claimed. But, Mr.T.M.Hariharan learned counsel has made appearance for all the respondents in this second appeal. I have heard the learned counsel for the appellant and the learned counsel for the respondents and I have also perused the records carefully.

3.This second appeal was admitted by this Court by order dated 07.10.2014 on the following substantial questions of law:-

" a) When materials are available on record to show that the plaintiff, who prays for a decree for declaration and possession, on the strength of a decree for partition/settlement/purchase of his father's share, was living with his father and mother as a single family till the death of his father, are the courts below correct in law in holding that the decree for partition is not collusive, but valid in law and consequently granting a decree for declaration and possession in favour of the plaintiff?

b) When the claim of the plaintiff for a decree of declaration and possession is ex facie on the strength of a collusive decree for partition, coupled with a deed of settlement (out of love and affection) which is falsified by receipt of consideration by the father of the plaintiff (Settlor), are not the courts below bound to hold that the case of the contesting defendant, namely, the appellant herein is more probable than the concocted case of the plaintiff and other colluding defendants, who are all members of the same family?"

4.The facts of the case would be as follows:-

The second defendant Mr.Venkatachalam is the father of the plaintiff in the suit. Mr.Santhosh Kumar/ plaintiff and his sisters had filed a suit in O.S.No.257 of 1993 on the file of the learned Principal Subordinate Judge, Salem for partition of the joint family properties including the present suit property. During the pendency of the said suit, a compromise was reached between the parties, in which, Mr.Venkatachalam after having received a sum of Rs.20,000/- as consideration, agreed for decree being passed in favour of Mr.Santhosh Kumar namely the plaintiff herein in respect of the suit property. Accordingly, recording the compromise reached between the parties, a decree of compromise was passed by the learned Principal Subordinate Judge, Salem in favour of the plaintiff herein.

5.By virtue of the said compromise decree, the plaintiff has become the absolute owner of the suit property. It is the further case that subsequent to the said decree of compromise passed by the learned Principal Subordinate Judge, Salem, the first defendant/appellant herein appears to have purchased the suit property from Mr.Venkatachalam by means of a registered sale deed dated 23.06.1997 (Ex.B.9). It is on that basis, the appellant/ first defendant claims title and also possession of the suit property.

6.It is the case of the plaintiff in the suit that Mr.Venkatachalam had no interest over the suit property after the partition decree in the earlier suit in O.S.No.257 of 1993 dated 01.03.1994 passed by the learned Principal Subordinate Judge, Salem. Therefore, assuming that the sale deed dated 23.06.1997 was really executed by Mr.Venkatachalam (Ex.B.9), that would not convey title in favour of the appellant herein.

7.The trial Court framed appropriate issues and the parties were called upon to let in evidence both oral as well as documentary. On the side of the plaintiff as many as 14 documents were exhibited and two witnesses were examined as P.W.1 and P.W.2 including the plaintiff in the suit. On the side of the defendants as many as 14 documents were exhibited and two witnesses were examined as D.W.1 and D.W.2 including the first defendant in the suit. Having considered the above materials, the trial Court decreed the suit as prayed for and that was confirmed by the First Appellate Court. That is how, the first defendant in the suit is before this Court with this second appeal.

8.The learned counsel for the appellant would submit that the partition decree is a collusive decree between the plaintiff and his father and therefore, the same is not valid. In my considered opinion, this argument deserves to be summarily rejected for the simple reason that the appellant herein have purchased property from Mr.Venkatachalam after passing of the compromise decree on 01.03.1994 (Ex.A.1). Whether the said decree was obtained by collusion or not, it is true that the decree was passed on the basis of the compromise reached between the parties including Mr.Venkatachalam. Hence, such a decree passed on compromise cannot be treated as collusive decree. Thus, as per the said compromise decree, the suit property has gone to the hands of the plaintiff and thus, absolutely the plaintiff has got title over the suit property.

9.So far as the second question of law is concerned, it is the case of the appellant that because Mr.Venkatachalam had received consideration for compromise in the earlier suit, the claim of declaration of title based on the above collusive decree is not maintainable. In my considered opinion, this contention of the appellant deserves to be simply rejected for the simple reason that I have already held that the decree passed in the partition suit is not a collusive decree, but, it is a decree passed on compromise. Thus, both the questions of law are to be answered against the appellant as the Courts below have rightly held that the plaintiff has established his title and the appellant/first defendant has not established that he has got right to remain in possession of the property. Therefore, the Courts below were right in decreeing the suit as prayed for.

10.In the result, the Second Appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm
To

1.The II Additional District Judge,
Salem.

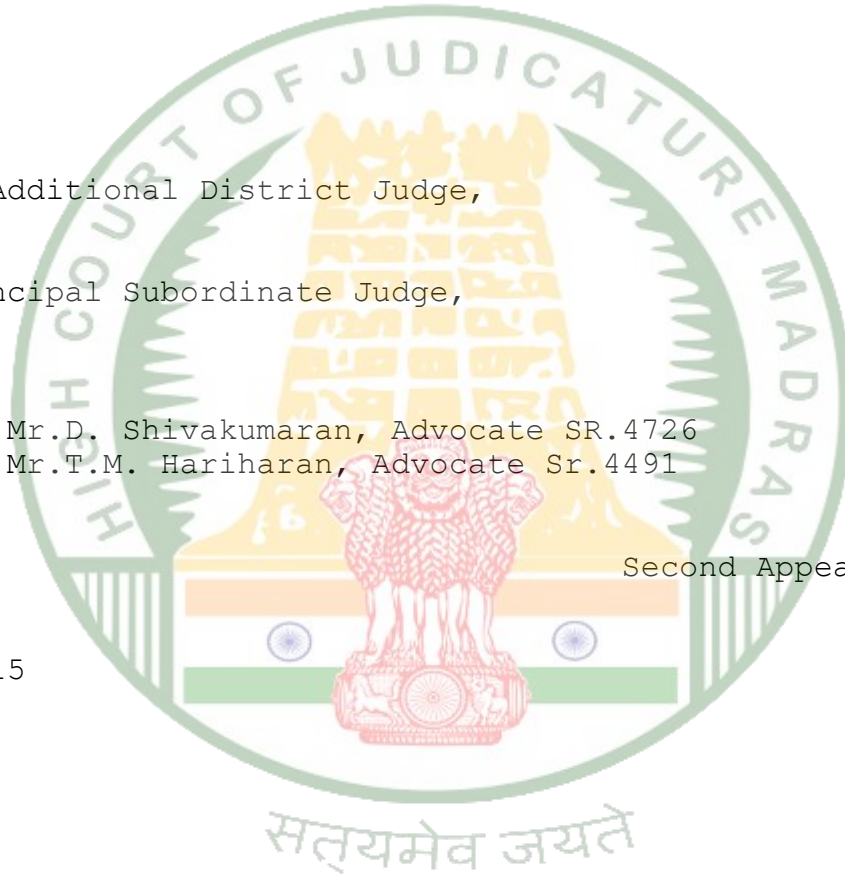
2.The Principal Subordinate Judge,
Salem.

+ 1 cc to Mr.D. Shivakumaran, Advocate SR.4726

+ 1 cc to Mr.T.M. Hariharan, Advocate Sr.4491

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