

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1038 of 2009

Karupannan

... Appellant/Plaintiff

Vs.

1. S.V.Selladurai

2. V.Chinnammal

... Respondents/Defendants

Appeal under Section 100 of the Code of Civil Procedure Code against the judgment and decree dated 30.4.2009 made in A.S.No.21 of 2008 on the file of the Principal District Court, Namakkal, confirming the order dated 09.6.2005 made in O.S.No.1333 of 2004 on the file of the Principal District Munsif Court, Namakkal.

For Appellant : Mrs.G.Sumitra

For Respondent-1 : Served. No appearance

For Respondent-2 : Mr.S.Balasubramanian

J U D G M E N T

The appellant herein filed O.S.No.1333 of 2004 before the learned District Munsif, Namakkal, in representative capacity, representing all the creditors who had lent money to the first defendant seeking a declaration that the sale deed executed by the first defendant in favour of the second defendant on 28.10.2003 is null and void and the same is not binding on the plaintiff and other creditors. The suit was dismissed by the trial Court by the decree and judgment dated 09.6.2005. As against the same, the plaintiff filed an appeal in A.S.No.21 of 2008. By decree and judgment dated 30.4.2009, the learned Principal District Judge, Namakkal, dismissed the said appeal. As against the same, the plaintiff is before this Court with this second appeal.

2. I have heard the learned counsel for the appellant and the learned counsel appearing for the second respondent. The first respondent has not made any appearance despite service of notice. I have considered the records carefully.

3. The case of the plaintiff is that the plaintiff had lent money to the first defendant under a promissory note. The first defendant has not repaid the same. Similarly, there were other similar creditors who had also lent money to the first defendant. The first defendant has not repaid the same. With a view to defraud the creditors, according to the plaintiff, the first defendant executed the sale deed in question, in favour of the second defendant. Therefore, according to the plaintiff, the said sale deed is void and the same is not binding on the plaintiff and the other creditors.

4. The first defendant remained ex parte before the trial Court as well as before the lower Appellate Court. The second defendant contested the suit that she has purchased the said property for valuable consideration and therefore, the sale deed is valid. She further contended that the plaintiff and other creditors had no interest over the property.

5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined and three documents were marked. On the side of the defendants, the second defendant was examined as DW1 and four documents were marked. The Commissioner's report and his plan were marked as Exx.C1 and C2. Having considered all the above, the trial Court dismissed the suit and the same was confirmed by the lower Appellate Court.

6. In the appeal, at the outset, I should say that there is no substantial question of law. Even before this Court, the plaintiff is not able to show any interest in the property either for the plaintiff or for the other creditors. The loans have been extended allegedly under promissory notes. No steps were taken to recover the said amount by filing appropriate suit. The loan under promissory note would not create any interest in the property owned by the debtor. In such view of the matter, both the Courts were right in dismissing the suit. Thus, I do not find any merit at all in this appeal, more particularly, I am of the view that there is no substantial question of law so as to admit the appeal.

7. In the result, the appeal fails and accordingly, it is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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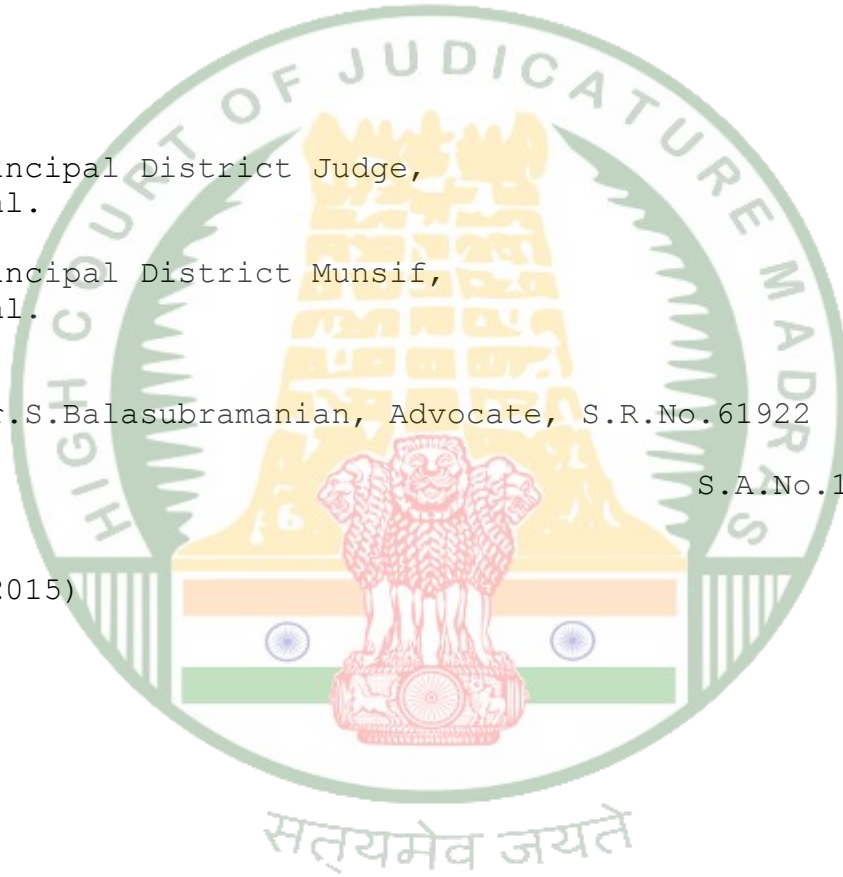
To

1. The Principal District Judge,
Namakkal.
2. The Principal District Munsif,
Namakkal.

+1cc to Mr.S.Balasubramanian, Advocate, S.R.No.61922

S.A.No.1038 of 2009

PA(CO)
CA(18/12/2015)



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