

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1034 of 2015 and M.P.No.1 of 2015

1. Mani @ Shanmugam

2. Maheswari

.. Appellants/defendants

-Vs-

Vadivel

.. Respondent/Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 08.01.2015 made in A.S.No.71 of 2013 on the file of the learned Principal District Judge, Salem, confirming the judgment and decree dated 26.03.2013 made in O.S.No.5 of 2009 on the file of the learned Subordinate Judge, Mettur.

For Appellants : Mr.N.Manokaran

For Respondents : ...

J U D G M E N T

The defendants in O.S.No.5 of 2009 on the file of the learned Subordinate Judge, Mettur are the appellants herein. The respondent herein is the plaintiff in the suit. The plaintiff filed the said suit for partition and for separate possession of half share in the suit properties. By decree and judgment dated 26.03.2012, the trial court decreed the suit. As against the same, the defendants filed an appeal in A.S.No.71 of 2013 on the file of the learned Principal District Judge, Salem. By decree and judgment dated 08.01.2015, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. Challenging the same, the appellants are before this Court with this Second Appeal.

2. This Second Appeal has come up today before me for admission. I have heard the learned Counsel for the appellants and I have also perused the records carefully.

3. The case of the plaintiff is as follows:

The plaintiff and the 1st defendant are brothers. Their mother was one Alamelu Ammal. Their paternal grandmother was one Thangammal. The 2nd defendant is the wife of the 1st defendant. The suit properties were purchased by Thangammal and Alamelu Ammal by means of a Registered Sale Deed dated 31.08.1950. On a portion of the suit properties, the plaintiffs father constructed a building where the family was residing. The suit properties were also mortgaged by raising loan and the same was subsequently redeemed. It is further stated that the properties remain undivided. According to the plaintiff, he is entitled for half share.

4. But the case of the defendants is that the suit property is a Natham Land. It was all along in the possession of Alamelu Ammal. Based on her long possession, under Natham Settlement Scheme, patta was issued to Alamelu Ammal by the Government. Alamelu Ammal executed an unregistered Will dated 06.06.1994 in favour of 1st defendant. Subsequently, Alamelu Ammal died in the year 1995. Thus, after the demise of Alamelu Ammal, the 1st defendant became the absolute owner of the suit property. The 1st defendant, thereafter executed a settlement deed in favour of the 2nd defendant on 01.05.2003. Thus, as of now, the 2nd defendant is the absolute owner of the suit property and he has been paying house tax and other taxes to the Government. Thus, the suit property is not available for partition. Therefore, the suit is liable to be dismissed.

5. Based on the above pleadings, the trial court framed appropriate issues. In order to prove his case, on the side of the plaintiff, 2 witnesses were examined and as many as 20 documents have been marked. On the side of the defendants, three witnesses were examined and as many as 15 documents have been marked. Three documents, namely, a copy of the 'A' Register, a copy of the Field Measurement Book and a copy of Chitta have been marked as Ex.X.1 to Ex.X.3. Having considered all the above, the trial court decreed the suit which was confirmed by the lower appellate court. That is how, the appellants are before this Court with this Second Appeal.

6. In this Second Appeal, the learned Counsel for the appellants would submit that so far as Natham Land is concerned, title lies with the person who is in possession of the property. In this case, according to the defendants, one Alamelu Ammal was in absolute possession and enjoyment of the same and the Government has issued patta for the said property to Alamelu Ammal. It is further submitted by the learned Counsel that by virtue of the Will dated 06.06.1994, the 1st defendant had become the absolute owner of the said property and subsequently, by virtue of the Settlement Deed executed by the 1st defendant in

favour of the 2nd defendant, the 2nd defendant has become the absolute owner of the suit property. According to the learned Counsel for the appellants, the courts below have failed to appreciate these evidences in their proper perspective.

7. I have considered the above submissions.

8. Ex.A.1 is the registered sale deed in the name of Alamelu Ammal and Thangammal. This is dated 31.08.1950. The said document is not at all disputed by the defendants. This document would go to show that the suit property was purchased by Thangammal and Alamelu Ammal jointly on 31.08.1950 and they were the owners of the suit property. The property was also mortgaged under Ex.A.2 and Ex.A.3 on 01.06.1961 and 24.08.1965. These documents would also go to show that they had absolute title for the suit property. Though it is alleged by the defendants that Alamelu Ammal alone had absolute title for the suit property, the above documents would clearly go to show that the said plea taken by the defendants is false. Apart from that, D.W.1 and D.W.2 during their cross-examination have also admitted Ex.A.1. Further, though it is alleged by the defendants that Alamelu Ammal executed an unregistered Will on 06.06.1994, the same has not been proved by examining one of the attestors to the said document. Absolutely, there is no evidence to prove the execution of the Will by Alamelu Ammal. Thus, the Will, namely, Ex.B.1 remains to be unproved. Once if it is so held that the said document has not been proved, then, the subsequent settlement deed executed by the 1st defendant in favour of the 2nd defendant would not convey any title to the 2nd defendant. At any rate, neither the 1st defendant nor the 2nd defendant could claim absolute title for the suit property.

9. Both the courts have appreciated these facts correctly and have come to the conclusion that the suit property is available for partition. The courts below have appreciated the oral as well as documentary evidence in their proper perspective. I do not find any perversity in the same. At any rate, I do not find any question of law much less a substantial question of law warranting admission of the Second Appeal. Further, since the questions raised by the learned Counsel for the appellants are all only questions on facts, I do not find any ground even to admit the Second Appeal.

10. In the result, the Second Appeal fails and the same is accordingly dismissed and the decree and judgment of the lower appellate court are confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

-s/d-
Assistant Registrar

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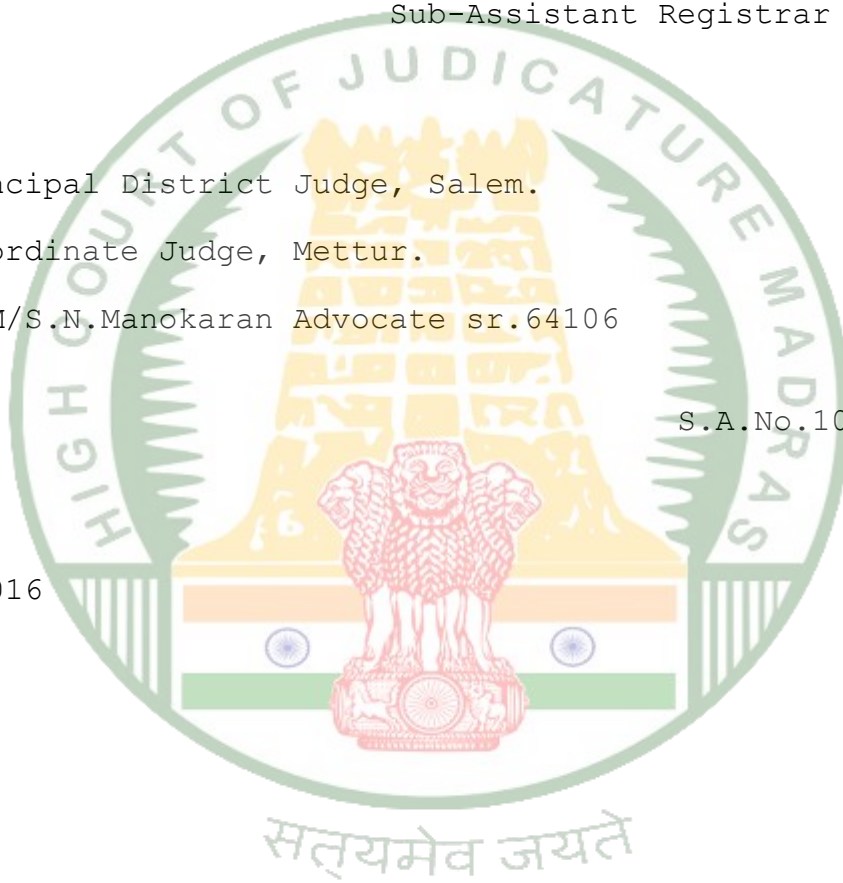
1.The Principal District Judge, Salem.

2.The Subordinate Judge, Mettur.

+1 cc to M/S.N.Manokaran Advocate sr.64106

S.A.No.1034 OF 2015

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