

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.07.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.Nos.675 and 676 of 2015
and
M.P.Nos.1 of 2015

1. Karunambigai

2. Dhanalakshmi

... Appellants/Appellants/Defendants
2 & 3 in both the Appeals

Vs.

1. Manonmani

... Respondent/R1/Plaintiff

2. Palanisamy Gounder (died)

... R2/R2/1st Defendant

3. Patchaiyappan

... R3/R3/4th Defendant

4. P.Gandhimathi

(R4 brought on record as LR of the
deceased R2 vide order of this Court
dated 24.06.15 made in M.P.No.2/2015
in S.A.Sr.No.32264 of 2014

... Respondents in
S.A.No.675 of 2015

1. Patchaiyappan

... R1/R1/Plaintiff

2. Palanisamy Gounder (died)

... R2/R2/1st Defendant

3. Manonmani

... R3/R3/4th Defendant

4. P.Gandhimathi

(R4 brought on record as LR of the
deceased R2 vide order of Court
dated 24.06.5 made in M.P.No.2/2015
in S.A.Sr.No.32265 of 2014

... Respondents in
S.A.No.676 of 2015

Prayer in S.A.Nos.675 and 676 of 2015:- Appeals under Section 100 of the Civil Procedure Code, against the judgment and decree dated 18.02.2013 made in A.S.No.39 and 41 of 2010 respectively on the file of the I Additional District and Sessions Judge, Tiruppur, confirming the judgment and decree dated 28.01.2010 made in O.S.Nos.44 and 45 of 2006 respectively on the file of the Subordinate Judge, Udumalpet.

For Appellants : Mr.W.M.Abdul Majeed
in both appeals

C O M M O N J U D G M E N T

The defendants 2 and 3 are the appellants. O.S.No.45 of 2006 was filed by one Pachiappan (respective respondents herein) for declaration of title, for permanent injunction, restraining the defendants from creating any document, also for permanent injunction, restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff (Pachiappan) and the other suit in O.S.No.44 of 2006 was filed by Manonmani (respective respondents herein) for the same relief against the very same defendants.

2. The plaintiff in both the suits, namely Manonmani and Pachaippan are husband and wife. The first defendant-Palanisamy Gounder is the father of the said Pachiappan and the defendants 2 and 3 are sisters. The suit properties were allotted to the share of the first defendant, namely Palanisamy Gounder on 14.12.1959 through partition between the said Palanisamy Gounder and his brothers. The said Palanisamy Gounder was in possession of the suit properties till such time. He partitioned the same on 02.05.1970, with his son, namely the said Pachiappan. The said partition deed was marked as Exhibit A-1. Thereafter, Palanisamy Gounder is said to have executed five settlement deeds in favour of his son, who is the plaintiff in O.S.No.45 of 2006 and the same was accepted by the said Pachiappan, who executed a settlement deed in favour of his wife Manonmani, the plaintiff in O.S.No.44 of 2006 with regard to certain properties which were given by his father through the settlement deeds. Accordingly, the plaintiff filed both the suits pursuant to the respective settlement deeds also.

3. The defendants 2 and 3 claim to have acquired right over the suit properties and became co-owners and contended that the settlement deeds executed by the said Pachiappan were not binding on them, as the same were obtained by force and fraud.

4. Therefore, the question that has to be decided is as to whether the suit properties are joint family properties or self-acquired properties of the said Palanisamy Gounder.

5. It is admitted by the appellants/defendants 2 and 3 that the properties allegedly belonged to the said Palanisamy Gounder, as per the partition deed, dated 14.12.1959. However, there was another partition effected between the said Palanisamy Gounder and Pachiappan on 02.05.1970 under Exhibit-A1, which was admitted by appellants. While-so, after the partition in the year 1970, there is no joint family character of the properties. The appellants who got married in the year 1992 and 1994 respectively, cannot claim any right even under the Act 1 of 90 of the Hindu Succession Act, as even before coming into force of that Act, the partition was effected between the father and his son and there were no joint family properties. The appellants being daughters, may have right in the share of their father. However, the father had already executed settlement deeds in favour of the said Pachiappan under Exhibits-A2 to A6 (year 2001). When once the settlement deeds are executed in the year 2001, the said Palanisamy Gounder, namely the settlor, has no right over the suit properties. Therefore, the cancellation of settlement deeds under Exs.B-10 to B-14, dated 03.03.2006 are invalid.

6. In view of the above circumstances, the best person to speak about the settlement deeds or the cancellation of the settlement deeds, is the first defendant, who is the father. Curiously, the first defendant had subjected himself for the chief examination by filing proof affidavit before the trial Court, but he did not subject himself for cross examination. Therefore, his evidence could not be considered by the trial Court. The only other evidence available is that of D.W.2, who is the second defendant, who had admitted the partition between her father and brother.

7. In such circumstances, the alleged fraud and force committed by the said Pachiappan (respective respondent herein) regarding the settlement deeds, had not been proved by the second defendant (first appellant herein). Hence, there are no grounds made out to interfere with the concurrent findings of the Courts below.

8. In fine, both the Second Appeals are dismissed as devoid of merits. Consequently, connected miscellaneous petitions are also closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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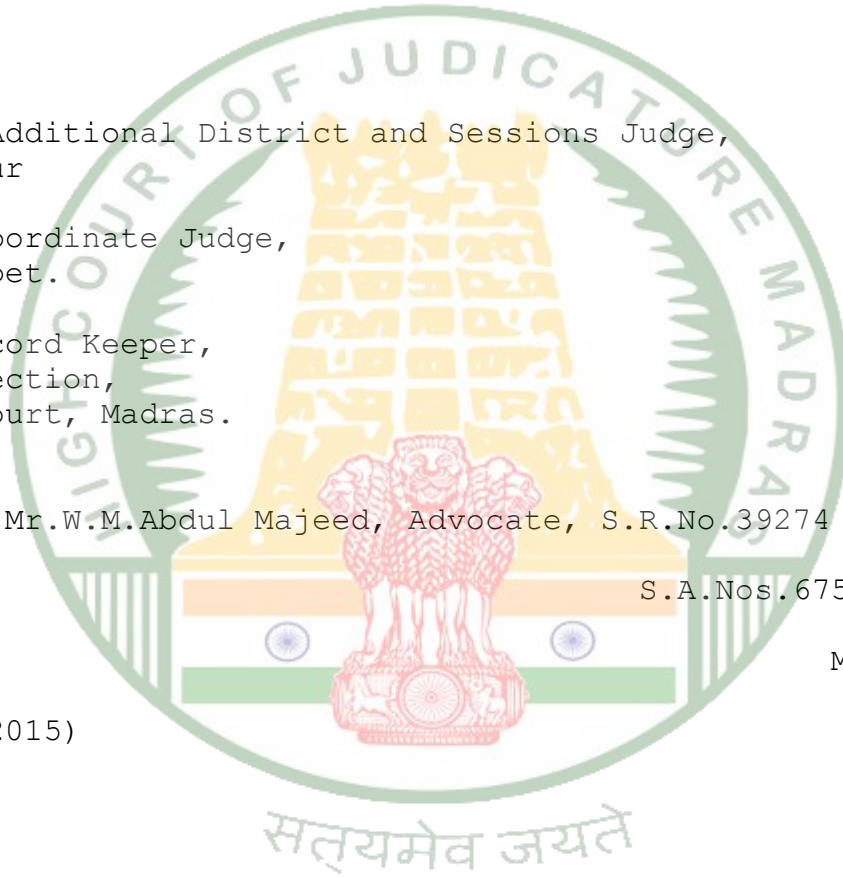
To

1. The I Additional District and Sessions Judge,
Tiruppur
2. The Subordinate Judge,
Udumalpet.
3. The Record Keeper,
V.R. Section,
High Court, Madras.

+2cc's to Mr.W.M.Abdul Majeed, Advocate, S.R.No.39274 & 39275

S.A.Nos.675 and 676 of 2015
and
M.P.Nos.1 of 2015

EV(CO)
CA(09/09/2015)



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