

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 30.11.2016

Pronounced On : 05.12.2016

CORAM

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Second Appeal No.1929 of 1991

and

C.M.P.No.17299 of 1991

1.Gunasekaran

2.Minor Maheswari

rep.by 1st appeallant

... Appellants/ Appellants/ 2nd and
3rd Defendant

/vs/

Chellammal (deceased)

...Respondent/ Respondnt/ Plaintiff

1.Valliammai

...Respondent/ Respondent/
1st Defendant

2.ThangaRaju

3.Krishnamoorthy

... Respondents / Respondents

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree made in A.S.No.100 of 1986 dated 12.10.1990 on the file of the Sub Judge, Ariyalur, confirming the judgment and decree of the District Munsif, Perambalur in O.S.No.386 of 1983, dated 30.07.1986.

For Appellants :Mr.C.Vediappan for
Mr.C.Selvaraju

For Respondents :No appearance

JUDGMENT

The short point involved in this second appeal is whether the alleged oral gift given by the plaintiff in favour of the first defendant is admissible in evidence?

2. The plaintiff, who is the mother of the first defendant has filed the suit for partition and mesne profits under the following circumstances:

On 03.08.1960 the suit property was divided among the plaintiff Sellammal and her two daughters Valliammi and Chinnapillai @ Chinnammal. Later, Chinnapillai @ Chinnammal relinquished her 1/3rd share in favour of her sister Valliammai,

who is the first defendant herein. While the plaintiff and the defendants' family were jointly enjoying the property till 1979, the first defendant has alienated the entire suit property by way of settlement deed to one Thangammal, who is none other the first defendant's daughter and one Gunasekaran, who is the husband of the Thangammal. Therefore, the plaint filed for partition seeking 1/3rd share in the suit property and mesne profits.

3. The defendants in the written statement have pleaded that the plaintiff has gifted her 1/3rd share orally in favour of the first defendant and therefore, she being the absolute owner of the suit items 18 and 19 of the property has settled in favour of Thangammal.

4. The Trial Court, taking note of Section 123 of the Transfer of Property Act, 1882, held that there cannot be an oral gift in respect of immovable property and if such a gift is made, it is not legally valid. On the said ground the suit for partition was allowed. Preliminary decree was passed. Aggrieved by the said judgment and decree, defendants 2 and 3 preferred appeal and the same was dismissed holding that Ex.B1-settlement deed made by the first defendant in favour of Thangammal in respect of suit items 18 and 19 is void and the plaintiff is entitled for 1/3rd share in the suit items 18 and 19.

5. The appellant admits the plaintiff title over the suit items property. The justification for Ex.B1-settlement deed, dated 24.03.1980, in respect of entire property shown as items 18 and 19 is that Sellammal/plaintiff has gifted her 1/3rd share in favour of Valliammai and therefore, she is entitled to settle the entire property in favour of Thangammal and her husband Gunasekaran.

6. Such a plea holds no water in the light of Section 123 of the Transfer of Property Act, 1882. The Courts below have rightly held that the suit was decreed in favour of the plaintiff rejecting the plea of the first defendant right over the property by virtue of the so called oral gift.

7. This Court finds no merit in the second appeal and hence, it is liable to be dismissed. Accordingly, the Second Appeal is dismissed with costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1.The Sub Judge, Ariyalur

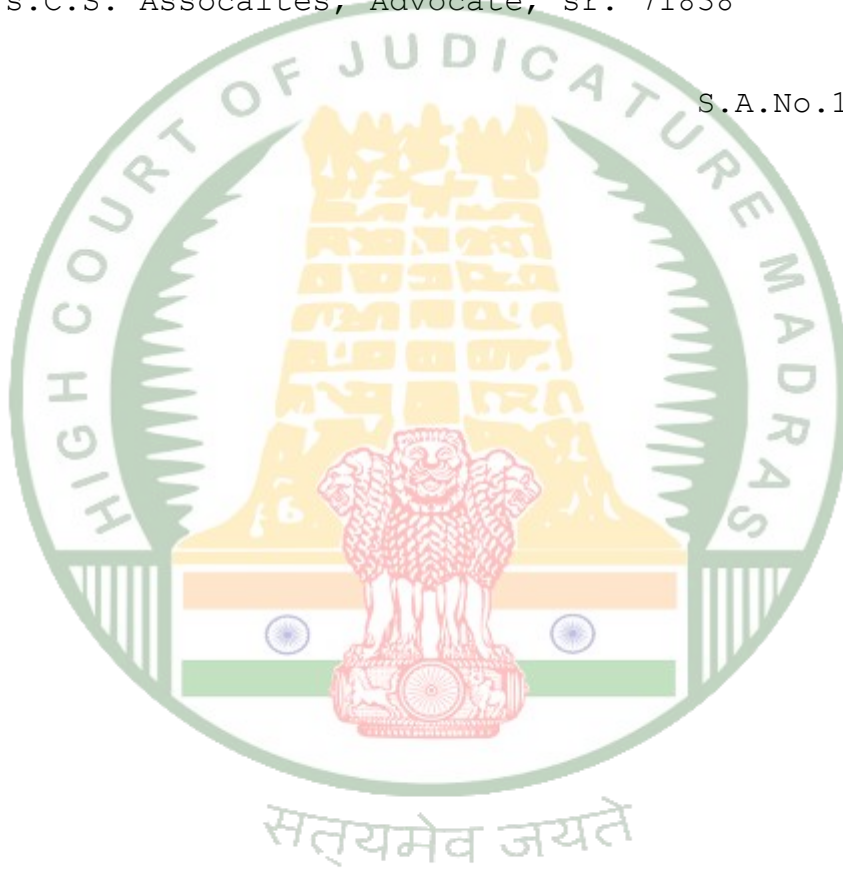
2.The District Munsif, Perambalur

3. The Section Officer
VR Section,
High Court, Madras

1 cc to M/s.C.S. Assocaites, Advocate, sr. 71838

S.A.No.1929 of 1991

GM (CO)
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