

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.280 of 2014

and

M.P.No.1 of 2014

S.Marimuthu Gounder

... Appellant/Plaintiff

Versus

1.S.Muthusamy

2.S.Duraisamy

3.Sellammal

4.Annalakshmi

... Respondents/Defendants

Prayer: Appeal filed under Section 100 C.P.C., praying to set aside the Judgment and Decree dated 1.8.2013 made in A.S.No.76 of 2010 on the file of the V Additional District and Sessions Judge, Coimbatore, confirming the Judgment and Decree dated 19.4.2010 made in the suit in O.S.No.132 of 2008 on the file of the Subordinate Judge, Pollachi.

For Appellant

: Ms.P.T.Asha

for M/s.Sarvabhauman Associates

For Respondent No.2

: C.R.Prasanan

Respondents 1, 3 & 4

: Parties appeared in person

JUDGMENT

When the Second Appeal came up for hearing today, the appellant, S.Marimuthu Gounder, and the respondents 1 to 4 viz., S.Muthusamy, S.Duraisamy, Sellammal and Annalakshmi, and their respective learned counsel, viz., Ms.P.T.Asha, learned counsel representing M/s.Sarvabhauman Associates, appearing for the appellant, and Mr.C.R.Prasanan, learned counsel appearing for the second respondent were present.

2. They have jointly submitted that the dispute between the parties have been settled out of Court and to that effect, they have also filed a Joint Memo of Compromise setting out the terms of settlement. In the said Joint Memo of Compromise, both the appellant as well as respondents 1 to 4 have signed. On enquiry, they have categorically submitted that they do not

have any objection to dispose the Second Appeal in terms of the Joint Memo of Compromise and a compromise decree may also be passed.

3. It is revealed from the records that the appellant had filed a suit in O.S.No.132 of 2008 on the file of the Subordinate Judge, Pollachi, for partition against the respondents herein. In the above said suit, the appellant has claimed partition on the ground that he had purchased a common 6/20 shares under a registered sale deed dated 25.1.2002 from one Shanthi and Karthik, who according to him, were the owners of the suit properties and were the legal representatives of one Kuppusamy and thus the appellant became one of the co-owners of the suit property. The respondents in their written statement have contended that the said Shanthi was not the wife of Kuppusamy and that the said Karthik was not the son of Kuppusamy. They have also contended that the alleged sale deed dated 25.1.2002 was a fraudulent document and the same was not binding on them and equally, they were not entitled to any share in the suit properties. On appreciation of the evidence both oral and documentary, the learned Subordinate Judge, Pollachi, after a fullfledged trial had proceeded to dismiss the suit on 19.4.2010, against which, the appellant who is the plaintiff in the suit, had preferred an appeal in A.S.No.76 of 2010 on the file of the learned V Additional District and Sessions Judge, Coimbatore. The Appeal was also dismissed.

4. Both the Trial Court as well as the First Appellate Court have concurrently held that the marriage between Shanthi and Kuppusamy was not proved and the said Karthik was not born to Kuppusamy and that the sale deed dated 25.1.2002 would not create any right in favour of the plaintiff/appellant in respect of the suit properties. Challenging the correctness of the Judgment and Decree of the First Appellate Court, the appellant being the plaintiff has filed the present Second Appeal before this Court.

5. The learned counsel have submitted that the parties have arrived at a settlement on the intervention of their well wishers and accordingly, they have settled the matter out of Court.

6. Insofar as the Joint Memo of Compromise is concerned, they have stated that the Judgment and Decree of both the Courts below in O.S.No.132 of 2008 as well as A.S.No.76 of 2010, respectively, became final and binding upon the appellant/plaintiff in total and that he or any person claiming under him would not lay any further claim in respect of the suit property as the claim made in the suit in O.S.No.132 of 2008 is fully and finally settled between the parties.

7. The appellant/plaintiff has agreed to execute a cancellation deed cancelling the sale deed that stood in his name which was marked as Ex.A.3 in O.S.No.132 of 2008 the decree of which is challenged in the above Second Appeal and also the decree that is to be passed in the above second appeal on the basis of the Compromise Memo, on intimation of a particular date of registration of such a cancellation deed or decree or both as the case may be, to be passed by this Court by appearing in person before the Sub-Registrar, Pollachi, do all such acts in execution of cancellation deed or the decree or both as the case may be, and all other documents incidental thereto for the purpose of registration of the same.

8. The appellant/plaintiff has also agreed that he would make out an application before the Subordinate Judge, Pollachi, to get back the original sale deed dated 25.1.2002 which was marked as Ex.A.3 and handover the same to the second respondent herein.

9. The appellant/plaintiff never disputed the possession of the respondents 1 and 2 in respect of the suit properties and in fact, he acknowledges the same and he undertakes not to disturb their possession at any point of time.

10. The appellant/plaintiff also undertakes to give a consent letter to the Tahsilder, Kinathukadavu Taluk for change of names in the revenue records such as joint chitta, joint patta, to be effected in the names of the respondents 1 and 2 herein, after deleting the appellant's name and the appellant also undertakes to give "No Objection" letter to the Tahsildar, Kinathukadavu Taluk, for the purpose of cutting trees standing in the lands, subject matter of the suit in O.S.No.132 of 2008 on the file of the District Munsif Court, Pollachi. The appellant as well as respondents 1 to 4 have also agreed that the suit as well as the Second Appeal may be dismissed as per the terms of Joint Memo of Compromise.

11. This Court, on perusal of the terms of Joint Memo of Compromise finds that in the interest of justice, this Second Appeal may be dismissed confirming the Judgment and Decree of the Courts below and a compromise decree may be passed in terms of the Joint Memo of Compromise and accordingly, it is ordered.

12. In the result, the Second Appeal is dismissed confirming the Judgment and Decree of the Courts below in terms of the memorandum of compromise. The Joint Memo of Compromise is taken on record and shall form part of the Decree. However,

there shall be no order as to costs.
Miscellaneous Petition is closed.

The connected

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asvm

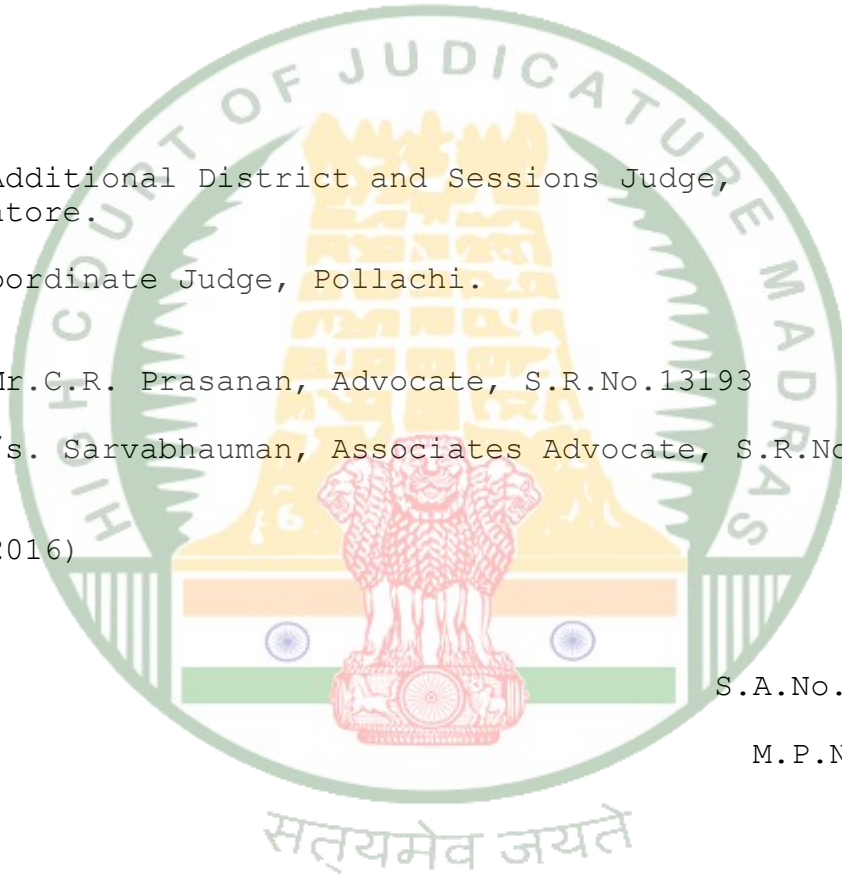
To

1. The V Additional District and Sessions Judge,
Coimbatore.
2. The Subordinate Judge, Pollachi.

+2ccs to Mr.C.R. Prasanan, Advocate, S.R.No.13193

+1cc to M/s. Sarvabhauman, Associates Advocate, S.R.No.13061

JSV(CO)
EU(18/03/2016)



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