

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.M.A.No.2022 of 2008 and  
C.R.P (NPD) No.393 of 2008  
and M.P.No.1 of 2008

K. Elangovan ... Appellant/Respondent/Plaintiff in CMA and  
Petitioner/Respondent/Respondent/  
Plaintiff in CRP

vs

1.N.M. Velusamy  
2.V. Paramasivam .... Respondents/Appellants/Defendants in both  
CMA and Respondents/Petitioners/Appellants/  
Defendants in CRP

Civil Miscellaneous Appeal filed Under Order 43 Rule 1 (v) of Code of Civil Procedure against the judgment and decree dated 26.6.2007 made in A.S.No.1 of 2007 on the file of Additional District Court (Fast Track Court No.I), Erode, in O.S No.629 of 2001 on the file of Principal District Munsif Court, Erode, remanding the case to the trial court.

Civil Revision Petition filed under Sec.115 of the Civil Procedure Code against the order dated 26.6.2007 made in I.A.No.22 of 2007 in A.S.No.1 of 2007 on the file of Additional District Court (Fast Track Court No.I), Erode in O.S.No.629 of 2001 on the file of Principal District Munsif Court, Erode.

For Appellant &  
the Petitioner : Mr.D. Selvaraju  
For respondents : Mr.K.S. Jeyaganeshan

COMMON JUDGMENT

The Civil Miscellaneous Appeal in C.M.A.No.2022 of 2008 arises against the judgment and decree in A.S.No.1 of 2007 on the file of Additional District Court (Fast Track Court No.I), Erode, remanding the matter back to the trial court viz., Principal District Munsif Court, Erode. The plaintiff is the appellant and the respondents are the defendants in the suit.

2. The plaintiff filed a suit in O.S.No.629 of 2001 for permanent injunction. The trial Court decreed the suit. Aggrieved over the same, the defendants preferred an Appeal in A.S.No.46 of 2004 and subsequently re-numbered as A.S.No.1 of 2007.

3. The Civil Revision Petition in C.R.P No.393 of 2008 arises against the fair and decreetal order passed in I.A.No.22 of 2007 in A.S.No.1 of 2007 on the file of Additional District Court (Fast Track Court No.I), Erode against the judgment and decree passed in O.S.No.629 of 2001 on the file of Principal District Munsif Court, Erode. The plaintiff is the petitioner and the respondents are the defendants in the suit.

4. In the appeal, filed by the defendants, they took out an application in I.A.No.22 of 2007 under Order 41 Rule 27 of Civil Procedure Code to produce Cancellation Deed dated 31.12.1999 and the patta proceedings dated 8.12.2000, as additional documents.

5. By virtue of the sale deed dated 15.07.1996, marked as Ex.A.1, the first defendant sold the suit property to the plaintiff. In the affidavit, filed in support of the application in I.A.No.22 of 2007, the defendants have stated that subsequent to the execution of the sale deed dated 15.07.1996, the first defendant cancelled the sale deed by a deed of cancellation dated 31.12.1999 and got it registered in the Office of Sub Registrar's Office, Avalpoondurai. Further, the first defendant has stated that since the trial Court had observed that since the first defendant had not cancelled the sale deed, he seeks to mark the cancellation deed, as an additional document.

6. Pursuant to the cancellation deed, the patta proceedings was also initiated and the first defendant sought to mark the patta proceedings dated 8.12.2000, as an additional document. On a reading of the affidavit, filed in support of the petition, it is clear that except stating that these two documents are vital documents to pronounce the judgment in the appeal, he has not stated any reason for not producing the documents before the trial Court.

7. When both these documents were very much available at the time of trial of the suit, they were not produced before the trial Court. The first defendant has not given any reason for not producing these documents at the earliest point of time. That apart, on a perusal of the cancellation deed dated 31.12.1999, it could be seen that the first defendant had cancelled the sale deed dated 15.07.1996 unilaterally without putting the plaintiff on notice about the cancellation of the document. The cancellation of the sale deed dated 15.07.1996 by the first defendant unilaterally is against the preposition of

the law laid down by the Full Bench of this Court reported in 2011 (2) CTC 1 (Latif Estate Line India Ltd vs Hadeeja Ammal). The ratio laid down by the Full Bench of this Court squarely applies to the facts and circumstances of the present case. The Lower Appellate Court erroneously allowed the application and remitted the matter back to the trial Court for adducing oral evidence with regard to the additional documents. The patta proceedings was initiated pursuant to the cancellation deed dated 31.12.1999.

8. Since the cancellation was made contrary to the legal propositions laid down by the Full Bench of this Court, the patta proceedings initiated, pursuant to the cancellation deed, cannot stand. The lower Appellate Court ought not to have allowed the application and permitted the defendants to produce the two documents as additional documents.

9. In these circumstances, the order of the remand made by the Additional District Court (Fast Track Court No.I), Erode in A.S.No.1 of 2007 is liable to be set aside and the lower Appellate Court is directed to consider the appeal, filed by the defendants, on merits and in accordance with law, and dispose of the same within a period of three months from the date of receipt of copy of this order.

10. For the reasons stated above, the fair and decreetal order passed in I.A.No.22 of 2007 in A.S.No.1 of 2007 on the file of Additional District Court (Fast Track Court No.I), Erode are set aside. Both the Appeal in C.M.A.No.2022 of 2008 and the Civil Revision Petition in C.R.P No.393 of 2008 are allowed. No costs. Consequently, connected MP is closed.  
sr

s/d-  
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Additional District Court (Fast Track Court No.I), Erode
2. The Principal District Munsif Court, Erode

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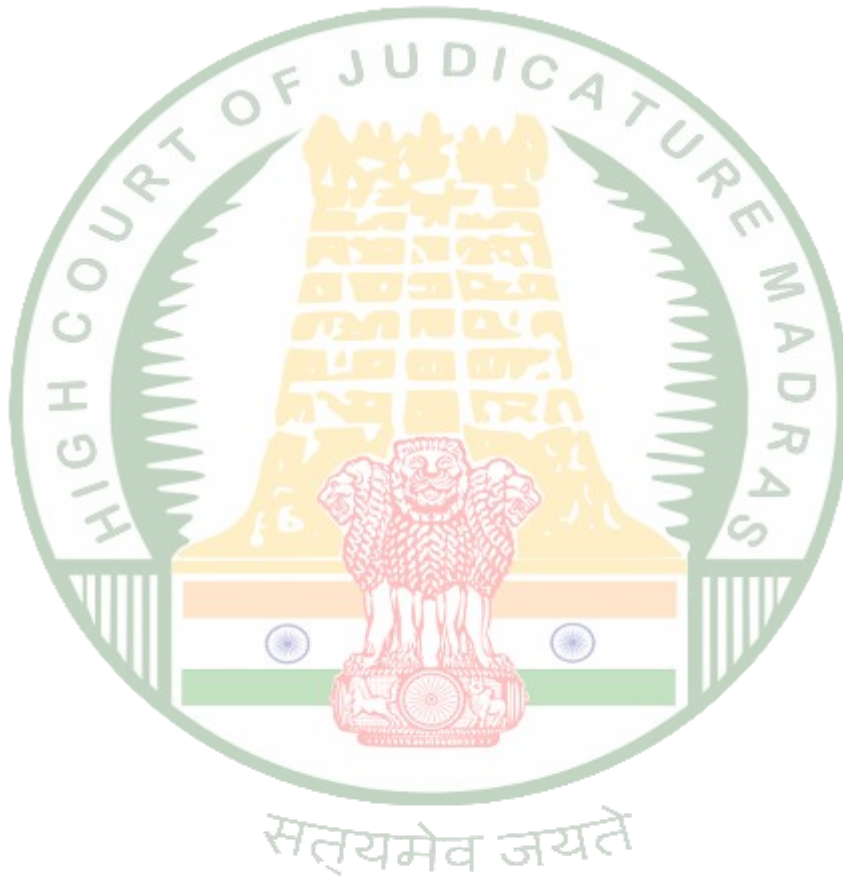
The Section Officer,  
V.R.Section, High Court,  
Madras.

+ 1 cc to Mr.D.Selvaraju, Advocate SR 2713

+ 1 cc to Mr.K.S.Jeyaganeshan, Advocate SR 2619

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C.R.P (NPD) No.393 of 2008



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