

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.913 of 2012

1.Abdul Jalal
2.Sakheela Bee

.... Appellants

Vs

Mohammed Idris

.. Respondent

Prayer:- Appeal suit filed under Section 96 of C.P.C. against the judgment and decree dated 20.03.2012, passed by the Additional District Judge, Fast Track Court No.II, Cuddalore, in O.S.No.136 of 2009.

For Appellants :Mr.C.Prasanna Venkatesh

For Respondent :Mr.S.N.Jayaraman, Senior counsel
for Mr.P.Gurunathan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in this appeal suit is to the judgment and decree, dated 20.3.2012, passed in O.S.No.136 of 2009, by the Additional District Court (Fast Track Court No.II), Cuddalore.

2. The respondent herein, as plaintiff, has instituted Original Suit No.136 of 2009, for the reliefs of partition and separate possession of both 'A' and 'B' Schedule properties, wherein the present appellants are arrayed as defendants.

3. The epitome of the averments made in the plaint may be stated like thus:

The plaintiff and first defendant are the sons of one Abdul Muthalif. Both the plaintiff and first defendant have jointly purchased 10 cents of land by virtue of a sale deed,

dated 30.4.2003, and subsequently, by way of obtaining loan jointly from a Bank, they built up 'marriage mandapam' and the same has been shown as suit 'A' Schedule. The suit 'B' schedule properties are nothing but movable properties, available in the suit 'A' schedule property. The first defendant is not amenable for having amicable partition and under the said circumstances, the present suit has been instituted, for getting the reliefs sought therein.

4. In the written statement filed on the side of the first defendant and adopted by the second defendant, it is averred that the plaintiff has already filed Original Suit in O.S.No.249 of 2006, on the file of the District Munsif Court, Panruti, against the present defendants and others, for the relief of perpetual injunction. Since the plaintiff has already filed O.S.No.249 of 2006, the present suit is not legally maintainable. It is falsely averred that both the plaintiff and first defendant have jointly purchased 10 cents of land, by virtue of sale deed, dated 30.04.2003. It is also false to state that both of them have jointly constructed 'marriage mandapam', which has been mentioned as suit 'A' schedule. The plaintiff has voluntarily executed an agreement dated 25.09.2003, wherein, he has admitted to the effect that he has not paid anything towards sale consideration mentioned in the sale deed dated 30.04.2003 and further, in the said agreement, it has been clearly admitted to the effect that the entire 'marriage mandapam' belongs to the first defendant and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of divergent pleadings raised on either side, the trial Court has framed necessary issues and after perpending both the oral and documentary evidence, has partly decreed the suit only in respect of the suit 'A' schedule property. Against the judgment and decree passed by the trial Court, the present appeal suit has been preferred by the defendants, as appellants.

6. The sum and substance of the case of the plaintiff is that the first defendant is his brother and both of them have jointly purchased 10 cents of land by virtue of sale deed dated 30.4.2003 and subsequently, after obtaining loan from a bank, they built up 'marriage mandapam' and the same has been shown as suit 'A' Schedule property and the suit 'B' schedule properties are nothing but the movables, which are available in the suit 'A' Schedule and since both the plaintiff and first defendant are joint owners of suit properties, the plaintiff is having half share and the first defendant has refused to effect amicable partition and under the said circumstances, the present suit has been instituted for the reliefs sought therein.

7. The defence put forth on the side of the defendants is that even though the sale deed dated 30.04.2003 stands jointly in the names of the plaintiff and first defendant, the plaintiff has not contributed anything towards sale consideration and after a lapse of five months from the date of sale deed dated 30.04.2003, the plaintiff has executed an agreement, dated 25.09.2003, wherein, he has candidly admitted to the effect that the entire 'A' schedule property is an absolute property of the first defendant and in which the plaintiff is not having any semblance of right and therefore, the present suit deserves to be dismissed.

8. The trial Court, as stated earlier, after considering the rival contentions put forth on either side, has partly decreed the suit only in respect of the suit 'A' Schedule property.

9. The learned counsel appearing for the appellants/defendants has contended to the effect that the sale deed dated 30.04.2003 has been marked as Ex.A1 and even though in Ex.A1, the names of both the plaintiff and first defendant are found place, by virtue of the agreement dated 25.09.2003, which has been marked as Ex.B1, the plaintiff has clearly admitted to the effect that he has not contributed anything towards sale consideration and further, he has clearly disowned the 'marriage mandapam' built up in the suit 'A' schedule property and the trial Court, without considering the averments made in Ex.B1 and also the clear admission made by the plaintiff, who has been examined as P.W.1, has erroneously decreed the suit in part and therefore, the judgment and decree passed by the trial Court are liable to be set aside.

10. In order to controvert the contentions put forth on the side of the appellants/defendants, the learned Senior counsel appearing for the respondent/plaintiff, has contended that Ex.A1, sale deed, stands jointly in the names of both the plaintiff and first defendant and even in Ex.B1, some inter-lineations are found place, so as to suit the convenience of the first defendant. Further, Ex.B1 is nothing but a release deed and the same has not been registered. Under the said circumstances, the Court is not bound to look into the same and the trial Court, after considering the legal impediment attached to Ex.B1 and also interlineations found therein, has rightly rejected the contentions put forth on the side of the appellants/defendants and under the said circumstances, the judgment and decree passed by the trial Court are perfectly correct and the same do not require any interference.

11. It is an admitted fact that Ex.A1, sale deed, stands jointly in the names of both the plaintiff and first defendant, wherein, it has been clearly stated that both of them have

jointly purchased 10 cents of land. It is also equally an admitted fact that the 'marriage mandapam' has been built up in the property, which is found place in Ex.A1.

12. The entire defence is based upon some recitals found in Ex.B1. In fact, this Court has perused Ex.B1, wherein it has been clearly stated that both the plaintiff and first defendant have jointly purchased 10 cents of land and also jointly obtained bank loan.

13. As pointed out on the side of the appellants/defendants, in Ex.B1 it has been specifically stated to the effect that the plaintiff has not paid anything towards the sale consideration mentioned in Ex.A1. Further, in Ex.B1 it is mentioned that the plaintiff is not having any right over the 'marriage mandapam'.

14. As stated earlier, this Court has perused the entire recitals found in Ex.B1 and ultimately found that some recitals have been subsequently added. In fact, in Ex.B1 it has been clearly mentioned that both the plaintiff and first defendant have obtained loan. Since in Ex.B1 it has been mentioned to the effect that both of them have obtained loan, on the basis of subsequent recitals the Court cannot come to a conclusion that the plaintiff has relinquished his interest in the property found in Ex.A1.

15. Even assuming without conceding that the entire Ex.B1 is a genuine document, it is nothing but a release deed and the same has to be registered. Since Ex.B1 is not a registered document, the same cannot be looked into.

16. Of course it is true that the plaintiff, as P.W.1, has partly admitted the recitals found in Ex.B1, on the basis of admission given by the plaintiff (P.W.1) with regard to Ex.B1, the Court cannot come to a conclusion that the plaintiff has entirely admitted all the recitals found in Ex.B1 and further, the plaintiff has clearly stated in his evidence to the effect that his uncle and the first defendant have obtained his signature. Further, for the purpose of proving the genuineness of the entire recitals found in Ex.B1, the witness found therein has not been examined on the side of the defendants.

17. The trial Court, after considering the vital infirmities found on the side of the defendants and also the voluminous documentary as well as oral evidence adduced on the side of the plaintiff, has rightly decreed the suit in part. In view of the foregoing enunciation of factual aspects, this Court has not found any attractive force in the contentions put forth

on the side of the appellants/defendants and therefore, the present appeal suit deserves to be dismissed.

18. In fine, this appeal suit is dismissed, without cost. The judgment and decree passed in O.S.No.136 of 2009, by the trial Court, are confirmed.

-s/d-
Assistant Registrar (CSVII)

True Copy

Sub-Assistant Registrar

msk

To

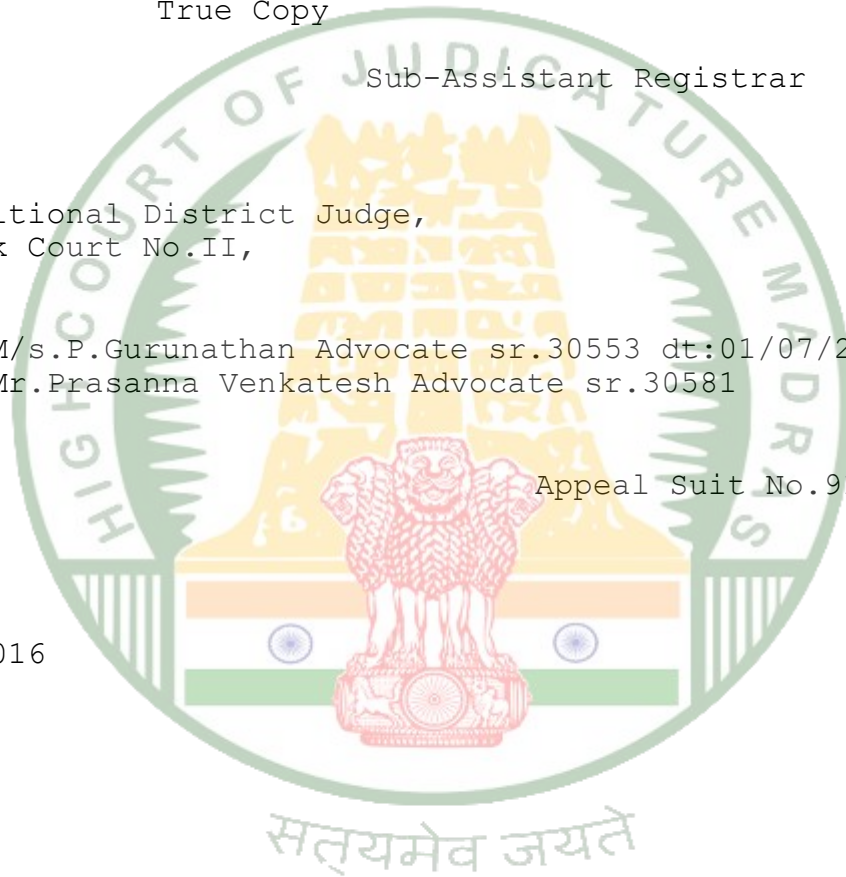
1.The Additional District Judge,
Fast Track Court No.II,
Cuddalore

+1 cc to M/s.P.Gurunathan Advocate sr.30553 dt:01/07/2016

+1 cc to Mr.Prasanna Venkatesh Advocate sr.30581

Appeal Suit No.913 of 2012

mg (co)
aa27/06/2016



WEB COPY