

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.463 of 2016

and

C.M.P.No.7770 of 2016

1.Ramasamy
2.Rayappan

.. Appellants

Vs

1.Mailathal
2.Giniyammal
3.Rayakkal

.. Respondents

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 27.10.2014 passed in A.S.No.114 of 2013 on the file of the I Additional District Judge, Coimbatore, partly confirming the judgment and decree dated 17.07.2013 made in O.S.No.643 of 2009 on the file of the I Additional Subordinate Judge, Coimbatore.

For Appellants .. Mr.B.Soundara Pandian

For Respondents .. Ms.Mathuvanthi Mathavan

JUDGMENT

This second appeal is preferred against the judgment and decree dated 27.10.2014 made in A.S.No.114 of 2013 on the file of the I Additional District Judge, Coimbatore.

2.The appellants are defendants 1 and 2 in the suit. The suit has been laid for partition and separate possession by respondents 1 and 2/plaintiffs. There are two schedules attached to the suit. The first schedule consists of two landed properties. The second schedule is a house property. The Trial Court decreed the suit as prayed for. The lower appellate Court allowed the appeal filed by the appellants in part insofar as the second schedule of the property is concerned, which is a house property. Insofar as the first schedule of the property is

concerned, which consists of two separate lands, the judgment and decree of the Trial Court was confirmed. Challenging that portion of the decree of the lower appellate Court, which in turn confirmed the judgment and decree of the Trial Court, the present appeal has been filed, by framing the following substantial questions of law:

(i) Are not the judgments and decrees of the lower Courts in so far as item 1 landed properties are concerned are substantially incorrect in law and are liable to be set aside as unsustainable?

(ii) Are not the judgments and decrees of the lower Courts bad in law in as much as they have not exercised their discretion in the manner known to law?

(iii) In the absence of any tangible evidence, whether the reasonings of the lower appellate Court that Reangasamy Gounder would have died after 1956 and hence the respondents are entitled to shares as per the provisions of Section 8 and Section 15 of the Hindu Succession Act, are legally correct?

(iv) Is the decision of the lower appellate Court legally correct in applying the provisions of Section 45 of the Indian Stamp Act and Section 17 of the Indian Registration Act on the fact of Ex.B2 partition muchalika focused as collateral piece of evidence to be considered with patta, kist receipts etc.,

(v) Is not the suit bad in law for non-joinder of necessary party viz., the purchaser under the sale deed executed by the first appellant and his sons?

(vi) Whether the lower appellate Court having rightly set the finding of the trial Court regarding item 2 house property, grossly erred in confirming the findings in respect of item -1 landed properties?

(vii) Whether the lower Courts failed to discuss the relevant documentary evidence projected on the appellants' side to prove their plea of adverse possession?

(viii) Is not the court fee paid by respondents 1 and 2 incorrect in the absence of any evidence to show their joint possession?

3.Learned counsel appearing for the appellants submits that the appeal is to be allowed on two grounds. The sale effected by the appellants in favour of the third party has never been challenged nor the subsequent purchaser has been arrayed as party defendant. Secondly, Ex.B2 which is a partition deed inter se defendants has also not been put into challenge. The learned counsel appearing for respondents 1 and 2/plaintiffs submits that Ex.B2 is only a muchalika, and it was not registered and therefore, the Courts below have rightly rejected the same. There is no necessity to challenge Ex.B2 nor implead the subsequent purchasers as the plaintiffs are not party to the said document. Hence the judgment and decree of the Courts below do not warrant any interference.

4.Coming to Ex.B2, it is admittedly a muchalika and not a registered document. In law, there can be a oral partition but if any alienees names made on a written document, the same has to be registered with the sole exception, being a recognition of such oral partition. Unfortunately, such a situation is not available to the case on hand. Thus, as rightly held by the Courts below, Ex.B2 was rightly eschewed. For the aforesaid reason, Ex.B2 need not be put into challenge. Even otherwise, respondents 1 and 2/plaintiffs are not party to the said document. Therefore, the said rationale would also apply to a further alienation made by the appellants/defendants 1 and 2 in favour of the third parties. The question of equity can be worked out at the time of passing final decree. After all, the suit is only for partition. Therefore, the alienation made by the appellants/defendants 1 and 2 insofar as their respective shares in favour of third parties is concerned, the same would not be affected. Hence this Court does not find any question of law much less substantial question of law involved in the second appeal.

5.In the result, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

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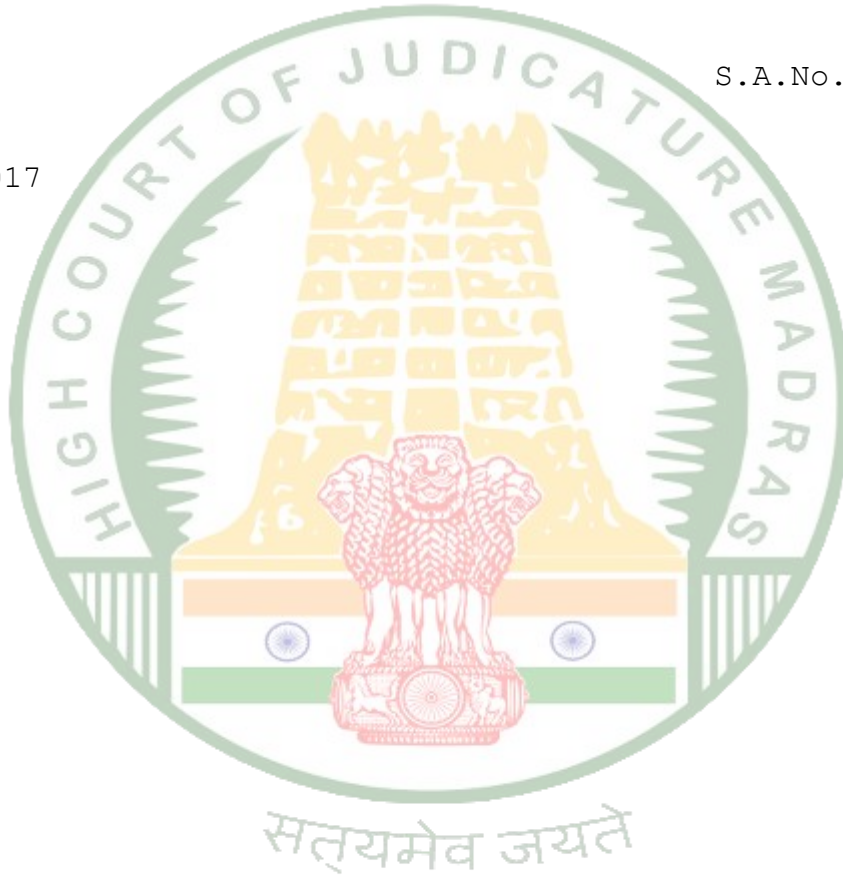
1.The I Additional District Judge,
Coimbatore.

2.The I Additional Subordinate Judge,
Coimbatore.

+1 cc to Ms.Mathuwanthy Mathavan Advocate

S.A.No.463 of 2016

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