

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.77 of 2016
and
C.M.P.No.1888 of 2016

1. Mrs.J.Pitchamma @ J.Pitchammal
2. E.Antony Savier Fernando ... Appellants/ Defendants

vs.

1. A.Selvam
2. S.Prema ... Respondents/ Plaintiffs

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 07.02.2015 in A.S.No.300 of 2014 on the file of III Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 25.06.2014 passed in O.S.No.8813 of 2010 on the file of III Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.A.Govindasamy

For Respondents : Mr.K.Kannan

J U D G M E N T

This appeal is filed by the defendants in a suit for declaration and permanent injunction. The respondents are the plaintiffs. The first appellant and the first respondent are sister and brother. The 2nd respondent is the wife of the first respondent, whereas the second appellant is the son of the first appellant.

2. The case of the plaintiffs is that the suit property was jointly purchased by the first plaintiff and first defendant on 12.10.1981 and therefore, both of them are entitled to equal share. It is their further case that the first defendant executed a settlement deed in favour of the second defendant on 05.12.2008 in respect of the entire suit property and therefore, such settlement deed insofar as the first plaintiff's share is concerned is not valid and binding upon the plaintiffs.

3. Per contra, the defendants contended that the first plaintiff relinquished his right over the suit property orally and that there was also an oral partition between the parties. Therefore, it is contended by the defendants that the settlement deed executed by the first defendant in favour of her son, namely, the second defendant in respect of the entire suit property is valid.

4. The trial Court, after considering the rival pleadings of the parties and the evidence let in by them, decreed the suit by declaring that the settlement deed executed by the first defendant in favour of the second defendant is null and void and not binding upon the plaintiffs insofar as the plaintiffs share in the property is concerned and consequently, granted permanent injunction. The defendants preferred an appeal before the First Appellate Court, which also came to be dismissed, thereby confirming the judgment and decree of the trial Court. Thus, the present Second Appeal is filed by the unsuccessful defendants challenging the concurrent findings of the Courts below.

5. Heard the learned counsel for the appellants and the learned counsel appearing for the respondents and perused the materials placed before this Court.

6. It is not in dispute that the suit property was jointly purchased by the first plaintiff and the first defendant on 12.10.1981. It is also an admitted fact that the first defendant executed the settlement deed in favour of the second defendant on 05.12.2008 settling the entire suit property in favour of the second defendant. Therefore, it is the bounden duty of the first defendant to plead and establish as to how she got the right over the property in its entirety when admittedly, the same was purchased by her along with the first plaintiff jointly as early as on 12.10.1981. Though the first defendant made an attempt to claim exclusive right over the suit property alleging oral relinquishment by the first plaintiff, both the Courts below disbelieved such contention and rejected the case of the defendants. It appears that the defendants have also pleaded oral partition. I do not understand as to how such self-contradictory pleadings can be raised by the defendants. In any event, there cannot be any oral relinquishment in respect of an immovable property, especially, when the value of the same exceeds Rs.100/-. When both the Courts below have concurrently found and rejected the case of the defendants on appreciation of the facts and circumstances as well as the evidence let in by the parties, this Court finds no substantial question of law for

consideration to entertain this Second Appeal. Accordingly, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

vsi

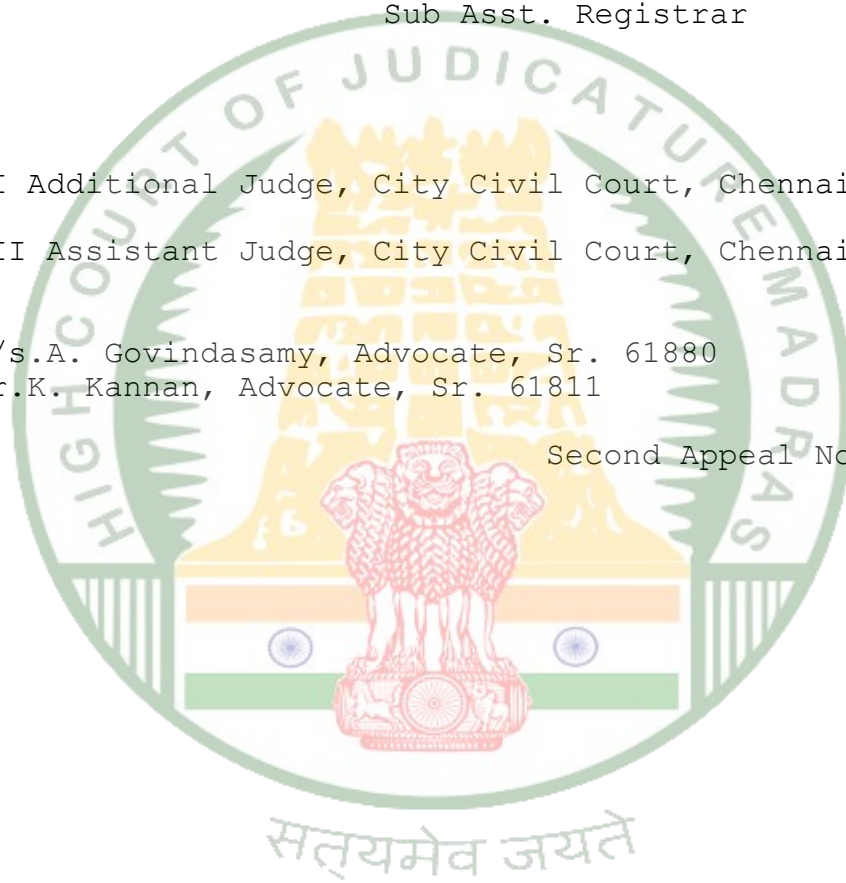
To

1. The III Additional Judge, City Civil Court, Chennai
2. The III Assistant Judge, City Civil Court, Chennai.

1 cc to M/s.A. Govindasamy, Advocate, Sr. 61880
1 cc to Mr.K. Kannan, Advocate, Sr. 61811

Second Appeal No.77 of 2016

VD (CO)
kk 1/12



WEB COPY