



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2016

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

Second Appeal (MD) No.522 of 2016
and
C.M.P. (MD) No.6149 of 2016

Irulappa Pillai

...

Appellant

versus

1.K.V.Duraipandi (Died)
2.Ganapathia Pillai (Died)

3.M.Dhanasekaran
4.M.Jawaharlal

5.R.Vasumathi
6.D.Malathi
7.D.Uthayakumar
8.D.Sukumar
9.D.Baskar

..R5 to R9 were brought on record as
Legal Heirs of the deceased first
respondent vide order dated 28/3/2016
in CMP.Nos.791 to 793/2016 in
SA (MD) SR.No.19038/06 by RMDJ)

10.Lakshmi
11.Thiraviyam
12.Panchavarnam
13.Jothi Muthu
14.Santhanam
15.Muthulakshmi

...R10 to R15 were brought on record as
Legal Heirs of the deceased 2nd respondent
vide order dated 28/3/2016 in

CMP.Nos.794 to 796/2016 in SA(MD)SR.No.19038/06 by RMDJ)

Prayer: Second Appeal is filed, to set aside the judgment and decree dated 30.04.2004 passed in A.S.No.126 of 2000 on the file of the Principal District Court, Madurai, as confirming the judgment and decree dated 06.11.1998 made in O.S.No.369 of 1979 on the file of the Principal Subordinate Court, Madurai.



For Appellant : No Appearance

JUDGMENT

WEB COPY

The appellant, who lost the legal battle in both the Courts below has come forward with this second appeal against the judgment and decree dated 30.04.2004 passed in A.S.No.126 of 2000 on the file of the Principal District Court, Madurai, as confirming the judgment and decree dated 06.11.1998 made in O.S.No.369 of 1979 on the file of the Principal Subordinate Court, Madurai.

2.The first respondent/second plaintiff has filed a suit for partition and separate possession of his half share in the suit properties and prayed for mesne profits stating that the suit properties are joint family properties of the first plaintiff, which was managed by them. Since there was a difference of opinion, the first plaintiff executed a registered settlement deed dated 05.02.1975 in favour of his sister's son viz., Duraipandi in respect of his share of properties. Aggrieved over the same, his son, the first defendant himself filed a suit in O.S.No.226 of 1975 on the file of th Taluk Munsif's Court, Madurai, for declaration of his title and injunction stating that his father has executed an unregistered release cum settlement deed. However, the Taluk Munsif, has disbelieved the contention of the first defendant and dismissed the suit. The first plaintiff and Duraipandi filed another suit against the son of the 1st defendant and another in O.S.No.91 of 1976 for declaration of title and for recovery of possession. The suit in O.S.No.91 of 1976 has been decreed and O.S.No.226 of 1975 has been dismissed. Against the said judgments and decrees in both the suits, the first defendant filed two appeals in A.S.Nos.443 and 375 of 1977 and both the appeals were tried together. The first Appellate Court dismissed A.S.No.443 of 1977 and allowed A.S.No.375 of 1977. No doubt, the first plaintiff has also executed the Will in favour of Duraipandi, on 10.01.1979, while he was in sound disposing state of mind. On the basis of Will, he constrained to file the suit for partition and separate possession.

3.Even though, the second defendant and other defendants raised a plea stating that Duraipandi is not entitled any share in the properties and the Will and Settlement deed are not true and genuine and prayed for dismissal.

4.The defendants 3 and 4 raised a plea stating that they entered into a sale agreement with the first defendant and the <https://hcservicescourts.gov.in/hcservices/>. During the pendency, both the first defendant and first plaintiff died. However, they prayed for the dismissal of the suit.



5.The trial Court, after considering the plaint and written statement, framed necessary issues and after considering the arguments made on either side, decreed the suit and granted preliminary decree for partition and separate possession, against which, an appeal in A.S.No.126 of 2000 has been preferred, in which, the first appellate Court confirmed finding of the trial Court stating that there was no unregistered release cum settlement deed in favour of the first defendant and held that the Will executed in favour of the second plaintiff/Duraipandi is valid and upheld the Will executed by the first plaintiff and dismissed the appeal, against which, the present second appeal has been preferred.

6.No representation on behalf of the appellant. Perused the documents available on records.

7. Perusal of the records would show that already the unregistered release cum settlement deed alleged to be executed by the first plaintiff in favour of the 1st defendant was disbelieved by the trial Court, which was also confirmed by the first appellate Court. After the death of the first plaintiff, the second plaintiff Duraipandi stepped into the shoes of the first plaintiff on the basis of Will. That factum was rightly considered by the Courts below and the Will has been proved in accordance with law and hence, no substantial question of law arises in this second appeal and the same is liable to be dismissed on the admission stage itself.

8.Accordingly, this second appeal is dismissed at the stage of admission. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1.The Principal District Judge, Madurai.

2.The Principal Subordinate Judge, Madurai.

+One cc to Mr.K.P.Narayanakumar, Advocate, SR.No.35362

+One cc to Mr.V.Maragathavel, Advocate, SR.No.35233

Arul

RL/5C/3P/DB/27/7/2016

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and

M.P. (MD) No.6149 of 2016