

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.244/2011

Saravanan ..Appellant/Respondents/
Plaintiff

..Vs..

1.M.Thangarasu Thevar ..
2.C.Vasantha
Respondents/Petitioner
Defendants

Prayer: Appeal filed under Section 96 R/w Order 41 Rule 1 & 2 of Civil Procedure Code to set aside the fair and decreetal order passed by District Judge Nagapattinam in I.A.No.112/2009 in O.S.No.31/2009 dated 21.09.2010.

For Appellant : Mr.V.K.Vijayaraghavan
For Respondents : Mr.C.Prabakaran
for Mr.V.Kasinatha Bharathi

JUDGMENT

The plaintiff in a suit for Specific Performance on the basis of an Unregistered Gift Deed executed by his father, having suffered a rejection of plaint in the hands of the trial Court, has come forward with this appeal.

2.According to the plaintiff, his father namely the first defendant, executed a Settlement Deed in his favour on 11.09.2007 and in view of the relationship, the plaintiff did not take steps to have the document registered immediately. While so, at the instance of the second defendant who is the daughter of the 1st defendant, he started acting against the interest of the plaintiff and it is also pleaded that the wife of the plaintiff, viz., Jothilakshmi, and the husband of the second defendant one V.Chithravelu were taking efforts to mediate between plaintiff and his father. Since his father namely, the first defendant refused to have the document registered, the plaintiff is constrained to file a suit for Specific Performance directing the defendants to comply with the formalities of registration of settlement sale deed on 11.09.2007.

3.The said suit was resisted by the defendants and the

1st defendant (father) claimed that he has not executed the document on 11.09.2007 to enable the plaintiff to sue for Specific Performance. The defendants raised various contentions apart from the denial of the execution of the document cited supra. The defendants also filed I.A.No.112/2009 seeking rejection of the plaint, on the ground that the settlement being without consideration executed out of love and affection cannot be a subject matter of Specific Performance.

4.The learned District Judge, Nagapattinam who heard the application concluded that since the document in question, viz., the settlement deed, having not been registered, the plaintiff cannot seek Specific Performance and on that ground the learned District Judge rejected the plaint resulting in dismissal of the suit. Aggrieved by the said rejection, the plaintiff is before this Court, by way of the present Appeal.

5.I have heard Mr.V.K.Vijayaraghavan, learned counsel appearing for the appellant, and Mr.C.Prabakaran, learned counsel appearing for Mr.V.Kasinatha Bharathi, learned counsel appearing for the respondents.

The following point arises for determination in the appeal:

1.Whether the trial Court was right in rejecting the plaint on the ground that there is no cause of action for the suit?

6.The claim of the plaintiff is that his father had executed a document, viz., Settlement deed on 11.09.2007 settling the property and thereafter, at the instance of the 2nd defendant resiled from it hence a suit for Specific Performance came to be filed treating the unregistered settlement deed as an agreement to settle. The father who is the 1st defendant has denied the execution of the very document. Therefore, it becomes necessary to find out as to whether the 1st defendant has executed the document or not, before concluding that the plaintiff has no cause of action to sue for Specific Performance. The learned District Judge had relied upon certain decisions and held that it will be inequitable to enforce an agreement for gift. Those decisions arise out of the proceedings which has ended after trial. Rejection of the plaint at the threshold should be based only on the allegations in the plaint and not on the denial in the written statement. In the present case we are faced with a situation where the son alleges a gift and the father denies its execution. The factum of execution has to be established and only if the factum of execution is established, the question of the enforcement would arise.

7.Therefore, I am of the considered opinion, this is not a case in which the plaintiff should be rejected at the threshold by invoking Order 7 Rule 11 of CPC, and hence I am

constrained to set aside the order of the trial Court rejecting the plaint.

8.The appeal is, therefore, allowed and the order rejecting the plaint is set aside. The learned District Judge, Nagapattinam is directed to restore the suit on file and complete the process of trial within a period of 4 months from the date of receipt of copy of this order and report such disposal to this Court. No costs.

9.Registry is directed to forward the copy to the learned District Judge, Nagapattinam at the earliest.

Sd/-
Asst.Registrar (CS VI)

/true copy/

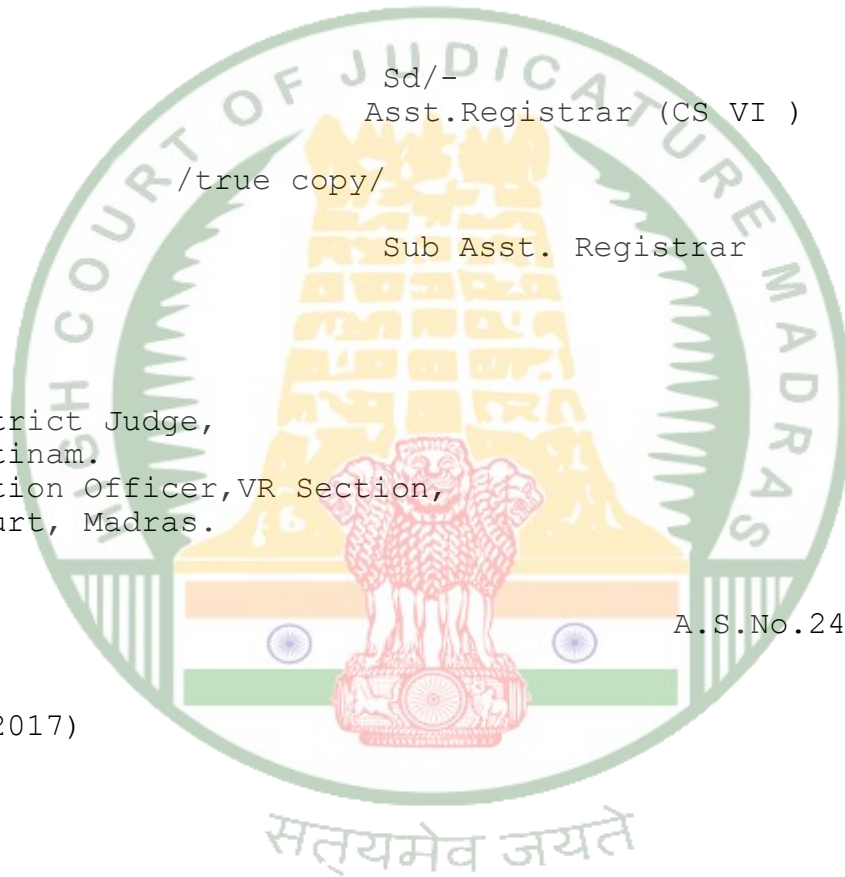
Sub Asst. Registrar

To

- 1.The District Judge,
Nagapattinam.
- 2.The Section Officer,VR Section,
High Court, Madras.

A.S.No.244 of 2011

NRI (CO)
VR(28/02/2017)



WEB COPY