

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.10.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.625 of 2017

and C.M.P.No.15451 of 2017

T. Padmavathi ... Appellant/Appellant
/2nd defendant

Vs.

1. S. Prabavathi

2. S. Muruganantham

... Respondents/Respondents
/Plaintiffs

3. Nagarathinam

... Respondent/Respondent
/1st Defendant

4. Erode Municipal Corporation,
Rep. by its Commissioner,
Brough Road, Erode.

5. The Assistant Electricity Engineer,
TANGEDCO,
Thiru Nagar Colony, Erode.

6. The Superintendent Engineer,
TANGEDCO,
Mettur Road, Erode.

... Respondents/Respondents
/Defendants 3-6

Prayer: The Second Appeal filed under Section 100 of Code of Civil Procedure to set aside the Judgment and Decree dated 16.08.2015, made in A.S.No.52 of 2015 on the file of the I Additional subordinate Court, Erode, confirming the Judgment and Decree dated 20.07.2015 made in O.S.No.80 of 2014 on the file of I Additional District Munsif Court, Erode.

For Appellant : Mr.V.Rajesh

J U D G M E N T

This second appeal is filed by the appellant against the Judgment and Decree dated 16.08.2015, made in A.S.No.52 of 2015 on the file of the I Additional subordinate Court, Erode, confirming the Judgment and Decree dated 20.07.2015 made in O.S.No.80 of 2014 on the file of I Additional District Munsif Court, Erode.

2. The second defendant in the suit is the appellant herein and the suit is filed by the plaintiff for declaration that the cancellation of settlement deed dated 15.03.2011 by executing a cancellation deed dated 13.08.2012 and the subsequent sale are not valid in law and for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession.

3. The parties are closely related. The first defendant is the mother of first plaintiff and the second defendant. The second plaintiff is the son of the first plaintiff. It is admitted by both the parties that first defendant is the owner of the property having purchased the same under Ex.A1 on 06.07.1976. She had executed a settlement deed in favour of the first and second plaintiff under Ex.A2 dated 15.03.2011. As per the said document, the first plaintiff gave life estate and therefore property vested with the second plaintiff, who is the son of first plaintiff. While so, it is stated by the second defendant/appellant that the first defendant had unilaterally cancelled the settlement deed under Ex.A3 on 13.08.2012 and executed a sale deed in favour of the second defendant on the same day. As this settlement deed has already been cancelled, the defendant claims ownership of the suit property. The Courts below have concurrently held with the unilateral cancellation of the settlement deed is bad in law and decreed the suit as prayed for.

4. It is contended by the learned counsel for the appellant that there were earlier settlement deeds executed by the first defendant which were unilaterally cancelled by her and those settlees were not added as parties. Though such argument is raised, no document has been produced to evidence the same. Hence, the said argument is rejected. They are also raising the question as to why after cancelling the settlement deed, the first defendant had to execute a sale deed in favour of the second defendant. Though the first defendant is alive, she was not examined. In the facts of the above case, the first defendant would be the best person to speak about Ex.A3 and Ex.A4. However, she has not been examined for the reason best known. Once the execution of settlement deed is admitted, it is held to be valid. The recitals in Ex.A2 also specifically state that possession was handed over to the plaintiffs on the same day. In the absence of any evidence contra to the same, the possession is also found to be with the plaintiff. Accordingly, the relief for permanent injunction was also granted.

5. In the light of the above facts and discussions, there is no question of law arising for consideration in the second appeal.

6. In the result, the Second Appeal is dismissed, confirming the judgment and decree dated 16.08.2015 passed by the Lower Appellate Court in A.S.No.52 of 2015. No Costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar(CS VII)

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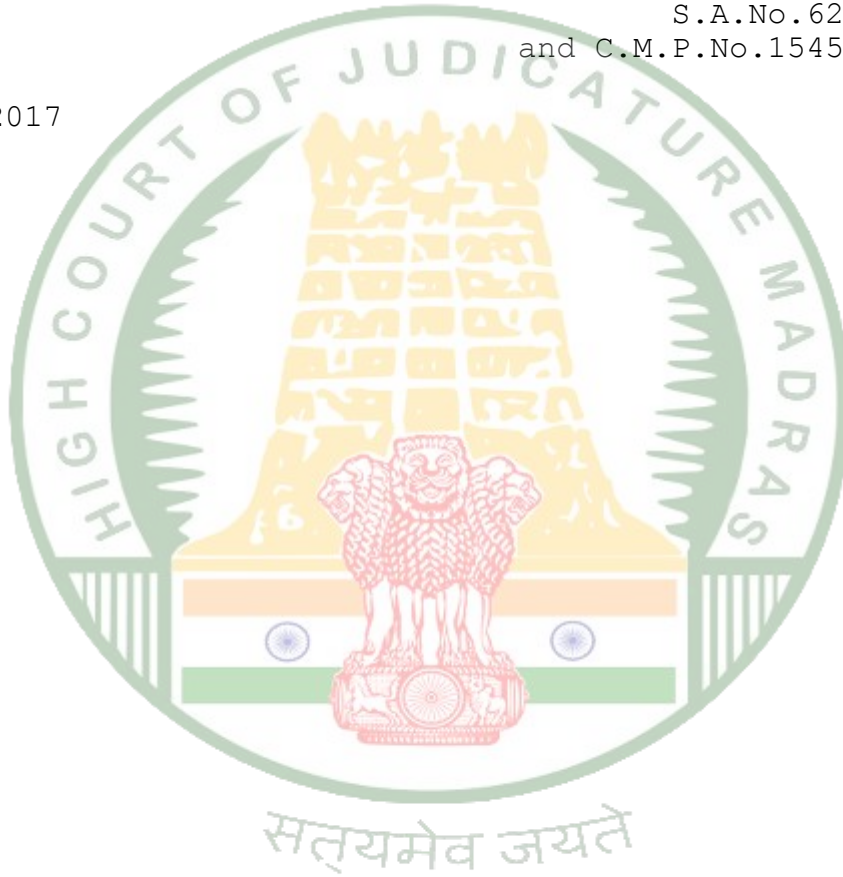
1. The I Additional subordinate Judge,
Erode.

2. I Additional District Munsif Court,
Erode.

+lcc to Mr.V.Rajesh, Advocate Sr.NO.75106

S.A.No.625 of 2017
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NM(CO)
sm:28.12.2017



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