

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05-01-2017

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

Second Appeal No.710 of 2015
and
M.P.No.1 of 2015

N. Rajendiran .. Appellant/Appellant/I Defendant

Vs.

1. Kamalayee
2. Vasanthi
3. Arumugham
4. P. Thanappan .. Respondents/Respondents/Defendants 2 & 3

Second Appeal against the judgment and decree dated 24-03-2015 passed in A.S.No.55 of 2014 on the file of II Additional Sub Court, Cuddalore confirming the judgment and decree dated 30-06-2014 passed in O.S.No.327 of 2002 on the file of the learned Principal District Munsif's Court, Cuddalore.

For appellant :: Ms. R. Meenal

For respondents:: Mrs. Grahalakshmi

for Mr. R. Gururaj for RR1 & R2
RR3 & 4 given up

JUDGMENT

The first defendant having suffered a decree at the hands of the Courts-below has come forward to file this appeal with the following substantial questions of law, which have been framed at the time of admission:

(i) Whether in law the Courts below are right in holding that the appellant's claim was hit by the Benami Transactions (Prohibition) Act, 1988 which is not retrospective and when the respondents 1 and 2 had not satisfied the necessary ingredients to dismiss the claim of the appellant?

(ii) Whether in law the Courts below are right in omitting to note that the suit for consequential reliefs without seeking declaration of title was not maintainable?

(iii) Whether in law the Courts below are right in concluding that Ex-A1 gift deed in favour of the 2nd respondent is true and valid when the settlers themselves did not have title to the property and when there was no evidence to show that the settlement was accepted and acted upon?

2. The first plaintiff, since died is the father, the second plaintiff, the mother and third plaintiff, the sister of the appellant/defendant. The first defendant was working for quite sometime at Singapore. A sale deed has been executed in favour of first and second plaintiffs from one Nataraja Iyer and others under Ex-A3 dated 20-02-1984, it was followed by a settlement deed executed by the first and second plaintiffs in favour of the third plaintiff under Ex-A4 dated 22-12-1999. All the revenue records stand in the name of the first and second plaintiffs and thereafter, the name of the third plaintiff. It appears that payments of statutory dues have been made by the appellant, though the documents are in the name of first and second plaintiffs. There appears to be some more dispute between the parties which resulted in another partition suit filed by the third plaintiff with the allegation that joint family properties have been purchased by the appellant in his name by taking advantage of the relationship and the first plaintiff, working at Singapore. The original document of Ex-A3 continues to be with the appellant.

3. The Courts-below decreed the suit as prayed for placing reliance upon Ex-A3 which is a registered document standing in the name of the first and second plaintiffs. Incidentally, the execution of Ex-A4 not being in dispute was given approval. The defence taken by the appellant that it is he who gave all the money and got the sale deed executed in the name of his father on his behalf was negatived. Challenging the same, the present appeal has been filed.

4. The learned counsel appearing for the appellant/first defendant submits that the factum of possession coupled with the original copy of Ex-A3 with him would prove his case. The suit has been filed only for possession but without a prayer for declaration. The provisions of the Benami Transaction (Prohibition) Act, 1988 being prospective cannot have an application to the sale deed effected in the year 1994. The settlement deed under Ex-A4 is nonest in the eye of law and Ex-A3 is held to be a sham and nominal document.

5. The learned counsel appealing for the respondents/plaintiffs submit that the concurrent finding rendered by the Courts-below resulted in a decree granted do not warrant interference under Section 100, CPC. As the facts

are not in dispute, the onus fastened on the appellant has not been discharged. Admittedly, the first plaintiff was working at Singapore and therefore, it is he, who purchased the property along with the second plaintiff. The second plaintiff has got the sale deed in her name and therefore, no claim can be made over it by the appellant. In such view of the matter, there is no necessity to seek declaratory relief. The appellant was aware of the settlement as seen from the averments made in the written statement not choosing to challenge the same. Thus, no interference is required.

6. The execution of Ex-A3 and A4 are not in dispute. In fact as seen from the written statement, the appellant not only accepts Ex-A3 but also Ex-A4. Under those circumstances, it is for the appellant to disprove the same in the manner known to law. There is absolutely no material as found by Courts-below that the appellant has contributed for the purchase of the property under Ex-A3. As recorded earlier, Ex-A3 contains two names, viz., the first and second plaintiffs. The fact that the first plaintiff was working in Singapore for a quite long number of years was also not in dispute. There is also no explanation as to why the appellant has not chosen to challenge Ex-A4 and take any step to change the document in his name over the suit property. He was also aware of the change of revenue records in pursuance of the execution of Ex-A4 in favour of third plaintiff. In such a situation, there is no necessity for a declaratory relief to be sought for. A civil case can go into question of title on a given case which has been duly complied with. When once Ex-A3 is found to be correct consequently, Ex-A4 has to be accepted. The first and second plaintiffs being the owners have executed Ex-A4 and made statement to the said effect in their plaint and also as seen from the evidence of P.W.11, a mere possession of the original document i.e., Ex-A3 will not give any semblance of right to the appellant.

7. In the circumstances, this Court is of the view that the questions of law sought to be raised will have to be answered against the appellant and in favour of the respondents/plaintiffs. Accordingly, the second is dismissed. Costs made easy. The connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

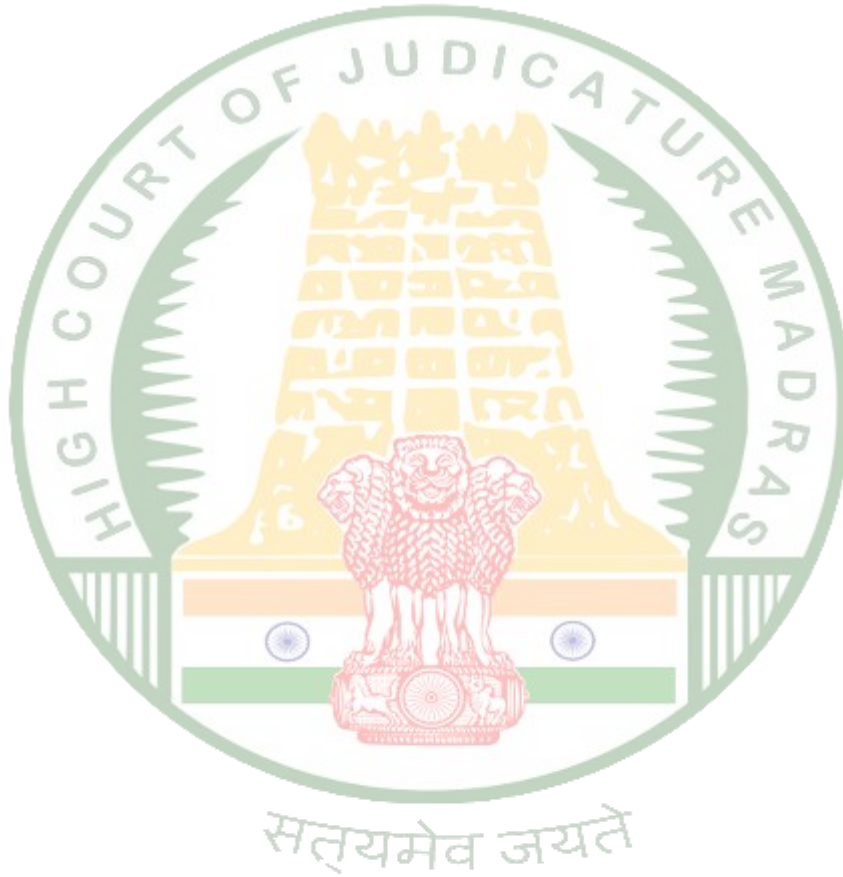
1. The II Additional Sub Court, Cuddalore
2. The Principal District Munsif Court, Cuddalore.

+1 cc to M/s.R.Meenal, advocate, sr.1315

+2 cc's to M/s.RGururaj, advocate, sr.1131.

rp(co)
krd 14/2

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