

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2017

PRONOUNCED ON : 23.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1111 of 2001

Ramanuja Padayachi	...	Appellant
	Vs.	
1.Rengasamy		
2.Subramania Pillai		
(2 nd respondent is given up as he remained exparte)	...	Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 18.10.2000 made in A.S.No.6 of 1999 on the file of the Sub Court, Panruti, confirming the judgment and decree dated 27.01.1999 made in O.S.No.85 of 1994 on the file of the District Munsif Court, Panruti.

For Appellant	:	Mr.Mrs.Nilaphar
For Respondent	:	No appearance
No.1		
For Respondent	:	Given up
No.2		

JUDGMENT

In this second appeal, the plaintiff has impugned the Judgment and decree dated 18.10.2000 made in A.S.No.6 of 1999 on the file of the Sub Court, Panruti, confirming the judgment and decree dated 27.01.1999 made in O.S.No.85 of 1994 on the file of the District Munsif Court, Panruti.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and Permanent injunction.

4. In brief, according to the case of the plaintiff, the suit properties and other properties belonged to Rajagopal Pillai and his family and the sons of Rajagopal Pillai divided the properties amongst themselves by way of a registered partition deed dated 20.07.1960 and under the above said partition deed, the "D" schedule properties were allotted to the second defendant and further, under the above said partition deed, excepting one item, the second defendant was not granted the right to alienate or encumber the other properties allotted to him and the recital contained in the partition suit, state that the properties were to be inherited by the sons of second defendant and Rajaram and Baskar are the sons of the second defendant and the plaintiff had purchased the suit properties from them for a valid consideration under the sale deed dated 07.03.1991 and enjoying the same. While so, it is found that on 04.10.1979, the second defendant had mortgaged the suit properties in favour of the one Radhakrishna Reddiar and Radhakrishna Reddiar had assigned the same in favour of the first defendant on 01.03.1989 and based upon the same, the first

defendant had levied O.S.No.31 of 1990 for the recovery of the mortgage debt and based upon the decrees passed in the said suit, he has preferred E.P.No.116 of 1993 for bringing the mortgage properties for sale and when as per the partition deed dated 20.07.1960, the second defendant had been not granted the right to encumber the suit properties, the first defendant is not entitled to bring the suit properties for sale based upon the decrees obtained by him in O.S.No.31/1990 and as the suit properties belonged to the plaintiff, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the first defendant, in brief, is that it is true that the suit properties and other properties were allotted to the second defendant under the partition deed dated 20.07.1960 and the above said properties were granted to the second defendant absolutely under the partition deed and therefore, the subsequent clause contained in the partition deed restraining the second defendant from alienating or encumbering the properties allotted to him is not valid and not binding upon him. The sons of the second defendant are not entitled to the properties allotted to the second defendant under the partition deed and therefore, the sale deed obtained by the plaintiff dated 07.03.1991 from the sons of the second defendant is not valid.

The second defendant had mortgaged the suit properties in favour of Radhakrishna Reddiar on 4.10.1979 and on the basis of the assignment obtained by the first defendant from Radhakrishna Reddiar, he had levied the suit in O.S.No.31/1990 and based upon the decrees passed therein, had brought the suit properties for sale and inasmuch as the plaintiff has no title to the suit properties and hence, the suit is liable to be dismissed.

6. In support of the case of the respective parties, no oral evidence has been adduced. However, on the side of the plaintiff, Exs.A1 to 3 were marked and on the side of the first defendant, no documentary evidence has been adduced.

7. On a consideration of the material placed, both the Courts below have accepted the case of the first defendant and accordingly, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has been preferred.

WEB COPY

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration;

1. Whether in law the courts below are

right in omitting to see that when the parties to Ex.A1 intended to protect one item of property alone to benefit the descendants of the second respondent, a different interpretation was not possible especially when the second respondent, who was a party to the document remained exparte?

2. Whether in law the courts below were right in interpreting the document Ex.A1 in a manner contrary to the intention of the signatories to the document when the words in the deed itself were clear and unambiguous?

3. Whether in law the courts below are right in ignoring that when the second respondent had been specifically prohibited from dealing with the mortgaged property and the subsequent decree would bind his sons? Who are the absolute owners?

WEB COPY

9. It is not in dispute that the second defendant, who is one of the sons of Rajagopal Pillai, had been allotted the "D" schedule properties under the partition deed dated 20.07.1960, which has been

marked as Ex.A1. As rightly found by the Courts below, a perusal of Ex.A1 would go to show that the "D" schedule properties, which includes the suit properties also, had been absolutely allotted in favour of the second defendant and it is thus found that the second defendant has absolute right over the said properties inclusive of the suit properties. No doubt, there is a recital incorporated in the partition deed, subsequently, that excepting one item, the second defendant is not entitled to alienate or encumber the other properties. Therefore, according to the plaintiff's case, the mortgage deed effected by the second defendant in favour of Radhakrishna Reddiar on 04.10.1979 is in valid and therefore, the first defendant, on the basis of the assignment of the said mortgage deed, is not entitled to bring the suit properties for sale pursuant to the decrees passed in O.S.No.31/90 on the file of the Sub-Court, Cuddalore and further according to the plaintiff, inasmuch as he had purchased the suit properties from the legal heirs of the second defendant, according to the plaintiff, he should be granted the reliefs sought for in the suit.

10. However, it is pleaded by the first respondent that the specific condition imposed in the partition deed Ex.A1 restraining the second defendant from alienating or encumbering the properties allotted to him is invalid and according to him, the recitals of the partition deed Ex.A1 should be read homogeneously and so viewed, it

is contended that the earlier clause in the partition deed conferring absolute right on the properties allotted to the second defendant would prevail and therefore, it is stated that the second defendant is entitled to encumber the property and accordingly, based on the mortgage deed executed by him, the first defendant is entitled to bring the suit properties for sale and the plaintiff is not entitled to claim any title to the suit properties by way of purchase of the same from the sons of the second defendant and further, it is contended that while the second defendant is alive, his sons would not be entitled to convey a valid title in respect of the suit properties in faovur of the plaintiff and hence, the suit laid by the plaintiff is liable to be dismissed.

11. It is found that under the partition deed Ex.A1, the second defendant had been granted absolute right in respect of the properties allotted to him. As rightly put forth, the parties to the partition deed had chosen to effect division of the properties, to which, they are already entitled to and accordingly, under the said deed, they had chosen to allot distinct shares in respect of the various properties, to which, they are entitled to. Thus, when the parties to the partition deed had pre-existing right in the properties covered under the document and chosen to divide the same for allotting specific shares

in respect of the same to various parties, it is seen that what ever the properties allotted to each party under the partition deed would be acquired by him absolutely. In such view of the matter, as rightly held by the Courts below, even if there are inconsistent clauses in the document, the clause granting absolute right of the properties to the concerned party would prevail and therefore, the subsequent clause prohibiting the second defendant from encumbering/alienating the properties allotted to him cannot be given effect to and in this connection, it is found that the Courts below have rightly relied upon the legal authorities put forth by the first defendant and accordingly held that the condition imposed in the partition deed prohibiting the second defendant from alienating or encumbering the properties allotted to him would have no effect and the second defendant would always be entitled to deal with the properties allotted to him as he deems fit. The above reasonings and conclusions of the Courts below as regards the interpretation of the recitals found in the partition deed Ex.A1 are found to be inconsonance with law and not liable to be interfered with as such.

12. That apart, as rightly put forth, when the second defendant had been granted absolute right over the suit properties as well as the other properties under the partition deed Ex.A1, it does not stand to

reason as to how his sons would be entitled to the same during the life time of the second defendant. It is thus found that as long as the second defendant is alive, it is only he, who would be entitled to the properties allotted to him under the partition deed Ex.A1 and in such view of the matter, when his sons had not been granted any right as such to alienate the suit properties, particularly, during the life time of the second defendant, it is seen that the sale effected by his sons in favour of the plaintiff in respect of the suit properties would not be a legal transaction and hence, it is found that the plaintiff cannot claim any valid right in respect of the suit properties under the said transaction.

13. As discussed above, when the clause prohibiting the second defendant from alienating or encumbering properties allotted to him under the partition deed cannot be given effect to, particularly, when he had been already granted absolute right over the properties allotted to him, it is found that the clause granting absolute right to him would prevail and in such view of the matter, it is seen that the plaintiff cannot be allowed to restrain the first defendant from bringing the suit properties for sale pursuant to the decrees obtained by him in O.S.No.31 of 1990 on the file of the Sub-Court, Cuddalore.

14. In the light of the above discussions, the interpretation of various clauses of the partition deed Ex.A1 by the Courts below are found to be inconsonance with law and the second defendant is not prohibited from dealing with the properties allotted to him as he deems fit and in such view of the matter, the substantial questions of law formulated in this second appeal are answered against the plaintiff and in faovur of the first defendant.

15. In conclusion, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

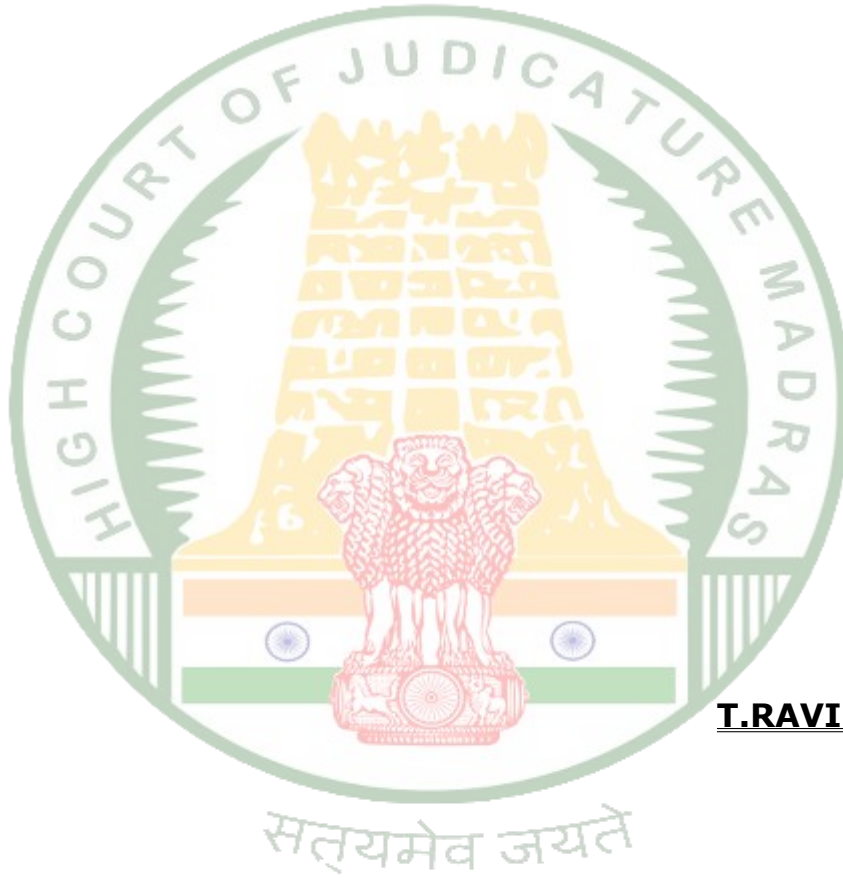
23.10.2017

Index : Yes/No
Internet :Yes/No
sms

To

1. The Sub Court, Panruti.
2. The District Munsif Court, Panruti.

WEB COPY



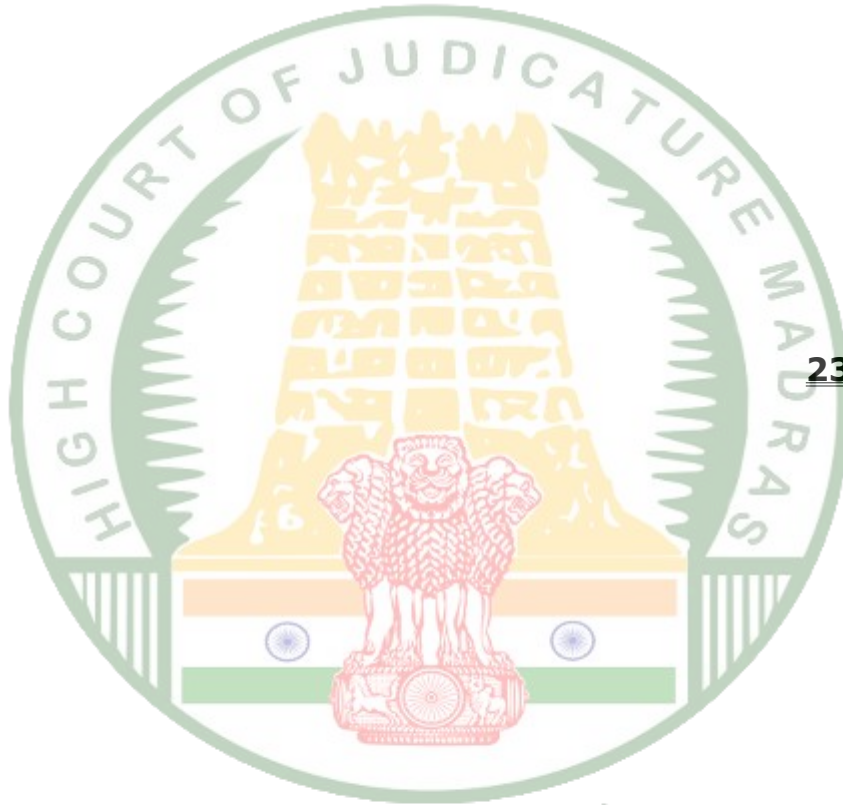
T.RAVINDRAN,J.

sms

WEB COPY

Pre-delivery judgment made in

S. A.No.1111 of 2001



23.10.2017

सत्यमेव जयते

WEB COPY