

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 20.06.2017

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.S.No.481 of 2014

B.Poongothai ..... Plaintiff

versus

C.Anbarasu ..... Defendant

Prayer: This Suit is filed under Order VII Rule 1 of CPC r/w Order IV Rule 1 of the Original Side Rules, for declaration to declare that the release deed dated 23.9.1998 executed by the plaintiff and registered as document No.3199 of 1998 at the Office of the Sub Registrar, Konnur as executed under the undue influence, fraud and misrepresentation of the defendant and hence null and void and for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property except by due process of law; and for partition of the suit schedule property and put the plaintiff in separate possession of her 1/2 share by metes and bounds and for costs.

For Plaintiff : Manoj Sreevalson

For Defendants : No appearance

JUDGMENT

The present has been filed by the plaintiff, praying for passing judgment and decree for the following reliefs, viz.,

- i) for declaration to declare that the release deed dated 23.9.1998 executed by the plaintiff and registered as document No.3199 of 1998 at the Office of the Sub Registrar, Konnur as executed under the undue influence, fraud and misrepresentation of the defendant and hence null and void;
- ii) for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property except by due process of law;
- iii) for partition of the suit schedule property and put the plaintiff in separate possession of her 1/2 share by metes and bounds; and
- iv) for costs.

2. The case of the plaintiff as set out in the plaint, is that the suit schedule property bearing Old No.31/35, New No.83, Plot No.389, 35<sup>th</sup> Azad street, G.K.M. Colony, Chennai -82 originally belonged to the plaintiff's father Late.V.Chinnappan. After the demise of plaintiff's mother Loganayaki in 1989, the plaintiff's brother/defendant got married in the year 1993 and lived in the

northern portion of the suit schedule property and the plaintiff along with her father lived separately in the southern portion of the suit schedule property. After the death of plaintiff's father in the year 1995, both the plaintiff and the defendant became the legal heirs to succeed the suit schedule property. Since, the plaintiff was of 22 years of age, she was under the care and protection of the defendant.

3. It is stated that the defendant took the plaintiff to the registration office under the disguise that, the suit schedule property had to be mortgaged for a loan for spending towards renovation of the property by which, the said amount could be used for the benefit of the plaintiff's marriage expenses. The plaintiff by believing the false representations of the defendant, signed the document furnished by the defendant. After the plaintiff's marriage with Mr.R.Benjamin in 2001, she left to Mumbai. Being dissatisfied of the city life in Mumbai, the plaintiff came back to Chennai and was in search for a rental property and as the southern portion of the suit schedule property was in a dilapidated condition. The plaintiff's husband also quit his job in

Mumbai and came back to Chennai and joined new job and in the year 2004, the plaintiff along with her husband renovated the southern portion and started living in therein.

4. It is stated that during the year 2014, the defendant picked up a quarrel with the plaintiff's husband and threatened that he would throw the plaintiff out of the suit schedule property. In continuation of the quarrel, the defendant also issued a legal notice dated 19.02.2014, claiming himself to be the absolute owner of the suit schedule property and also alleged that the plaintiff had executed a release deed in favour of the defendant. On suspicion, the plaintiff applied for a encumbrance certificate and also obtained a certified copy of the same, dated 17.03.2014 and was shocked to know that a release deed dated 23.09.1998 vide document No.3199 of 1998 and a subsequent mortgage deed dated 26.03.1999 vide document No.1364 of 1999 at the Office of the Sub-Registrar, Konnur were executed and the same were purported to be executed by the plaintiff on 23.09.1998 releasing her share in favour of the defendant for a consideration of Rs.3,00,000/- towards arrangement of funds

required for her marriage, thereby the defendant by undue influence, fraud and misrepresentation defrauded the plaintiff and by falsely implicating that the document is a mortgage deed for the schedule suit property's renovation, obtained her signature. Further as stated in the release deed, no consideration for Rs.3,00,000/- was received by the plaintiff. The suit was filed within the period of limitation as the plaintiff came to know about the existence of the said release deed only on 13.03.2014 on which date, the encumbrance certificate was obtained by the plaintiff. In these circumstances, the plaintiff has come forward with the present suit for the reliefs stated supra.

5. The defendants were set ex parte by order dated 07.12.2015. The said position continues as of now.

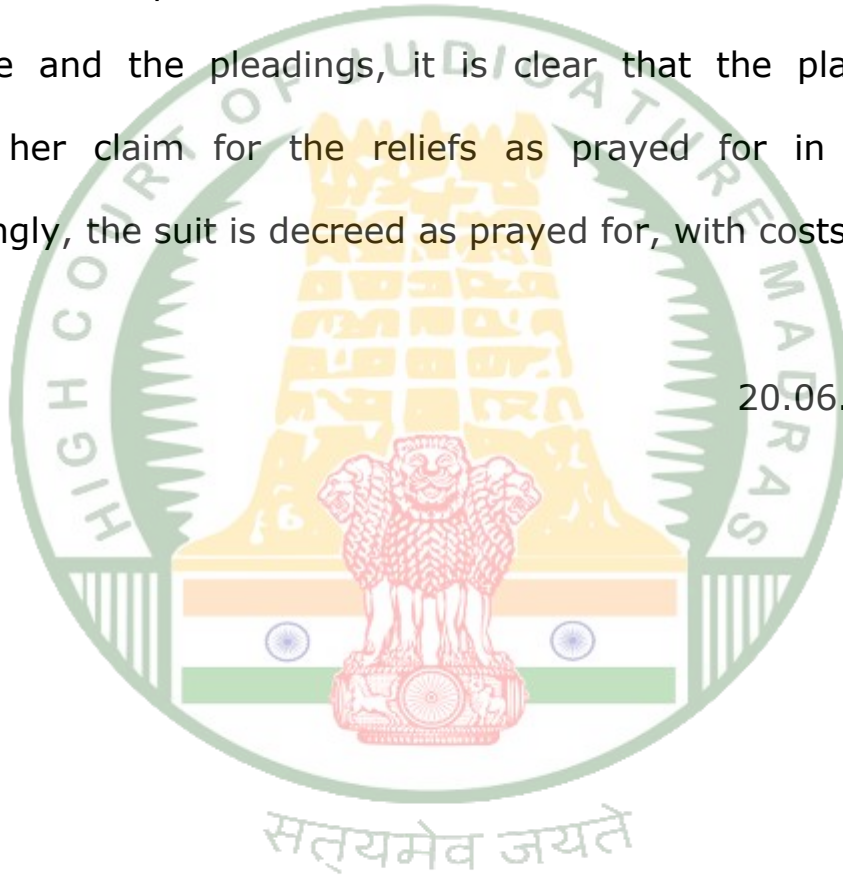
6. In order to prove her case, the plaintiff examined herself as PW.1 and got marked Exs.P1 to P5. Ex.P1 is the photocopy of the death certificate of Late Loganayaki, dated 19.12.1989, Ex.P2 is the computer generated copy of the death certificate of Late V.Chinnappan, Ex.P3 is the certified copy of the release deed,

dated 23.9.1998, Ex.P4 is the original legal notice issued by the defendant and Ex.P5 is the original encumbrance certificate.

7. On a perusal of the above oral and documentary evidence and the pleadings, it is clear that the plaintiff has proved her claim for the reliefs as prayed for in the suit. Accordingly, the suit is decreed as prayed for, with costs.

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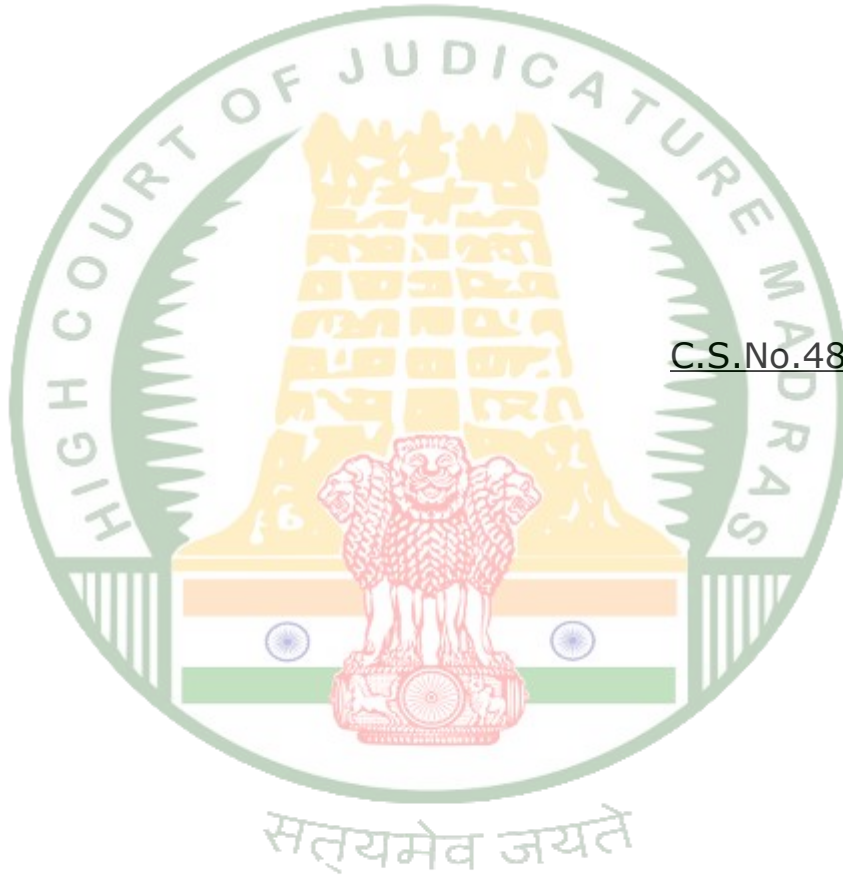
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V.PARTHIBAN, J.

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