

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

S.A.No.699 of 2016  
&  
C.M.P.No.13247 of 2016

D.Veeramani ... Appellant/Plaintiff  
Vs.  
D.Sakunthala ... Respondent/Defendant

Second Appeal is filed under Section 100 C.P.C., against the judgment and decree of the learned Additional Special Judge, Krishnagiri dated 26.04.2016 in A.S.No.38 of 2014 reversing the judgment and decree of the learned District Munsif, Krishnagiri dated 27.08.2014 in O.S.No.352 of 2011.

For Appellant : Mr.V.Nicholas  
For respondent : Mr.C.Prabakaran

JUDGMENT

The appellant/plaintiff is the son of the respondent/defendant. Suit has been laid for declaration and permanent injunction with respect to the suit property which forms part of the cancellation deed dated 03.02.2010 executed in favour of the appellant.

2. The suit property was originally purchased in the name of the appellant's father. He executed a gift deed dated 25.09.1989 in favour of the respondent-wife. She, in turn, executed Ex.A2-settlement deed dated 07.03.2008 in favour of the appellant. Thereafter, she cancelled the said settlement deed under Ex.A3-cancellation deed dated 03.02.2010.

3. The suit has been laid on the premise that there is no power or authority which lies with the respondent from cancelling the settlement deed executed as the appellant is the absolute owner. Before the trial Court the respondent took a plea that the suit property was the joint family property, while the case of the appellant being the plaintiff was that it is a self acquired property of his father. Before the trial Court, the appellant has deposed that the suit property was purchased

in the year 1985 in the name of his father through the joint family income, which consists of a joint family property and the labour extended by the appellant being the eldest son and his father. The trial Court decreed the suit as prayed for on the premise that the respondent/defendant has no power of cancellation after due execution. However, the relief for permanent injunction has been declined by taking note of the relationship being one of son and mother. The lower appellate Court has reversed the judgment and decree of the trial Court by placing reliance upon the evidence of the plaintiff being P.W.1 accepting that the suit property is the joint family property, having been purchased from the joint family income. The evidence of P.W.1 was also to the effect that the construction has been made through joint family income. Challenging the same, the plaintiff has come forward to file this second appeal by raising the following substantial questions of law.

1. When the documentary evidence clearly establish that the suit property is the self acquired property of M.R.Devan and consequently, the settlement deeds in question is valid in law whether the judgment and decree of the lower appellate Court based on the oral evidence in this regard are not perverse and contrary to evidence?

2. When no power of revocation has been reserved in the settlement deed executed by the defendant, the cancellations of the deed nearly after two years and that too after the settlement deed has been acted upon and given effect to whether the judgment and decree of the lower appellate Court upholding the cancellation deed is maintainable and sustainable in law.

3. Even assuming the suit property is a joint family property the attestation of all the members of the family including the father, brothers and sisters in the settlement deed executed by the defendant would make it valid in law whether the lower appellate Court is correct in reversing the judgment and decree of the trial Court?

4. The learned counsel appearing for the appellant submits that Ex.A2 has been attested by all the members of the family. There is no power of revocation under the said document. The documents under Exs.A2 and A3 would show that it is a self acquired property of the father. Therefore, the judgment and decree of the lower appellate Court requires reversal. Reliance has been made on the judgment in B.K.RANGACHARI AND OTHERS V. L.V. MOHAN (2015 (2) CTC 465) for the submission that it is for

the respondent to come to the Court seeking cancellation of the settlement deed executed.

5. The learned counsel appearing for the respondent submits that an admission is the best form of evidence and therefore, being a relevant fact, the lower appellate Court has rightly considered it and declined to grant the relief. Against the rejection of the relief sought for, there is no appeal. It is for the plaintiff to establish his case, which he has not done so. Hence, no interference is required.

6. In the case on hand, execution of the documents are not in dispute. Section 92 of the Indian Evidence Act, 1872, would not come into play since we are not concerned with contradicting any terms of the documents executed. Ex.A3 has to be seen in the context of Exs.A2 and A1. These documents also show that it is a self acquired property of the father. When the plaintiff himself admits in his evidence that the suit property is not the self acquired property of the father coupled with the further fact that construction has also been put up with the joint family income, then, he cannot succeed. The provision of Section 91 of Indian Evidence Act, 1872, permits proving any fact which would invalidate any document. Now the fact that the suit property is the joint family property, having been purchased from joint family nucleus has been duly proved not only by evidence of D.W.1 but also by the plaintiff being P.W.1. Therefore, this Court does not find any perversity in the decision of the lower appellate Court. The trial Court has not considered that part of the evidence of P.W.1 while decreeing the suit. In such view of the matter, this Court is of the view that the judgment relied upon by the learned counsel appearing for the appellant in B.K.RANGACHARI AND OTHERS V. L.V. MOHAN (2015 (2) CTC 465) does not have any application.

7. Unfortunately, in the case on hand, the other members of the family are not arrayed as party though it is claimed by the appellant that they cannot have any objection. The decree for permanent injunction was also rejected and has become final. Accordingly, the substantial questions of law raised are answered as against the appellant and the second appeal stands dismissed. However, the dismissal of the second appeal will not stand in the way of the appellant seeking for partition and separate possession, if so advised. No costs.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

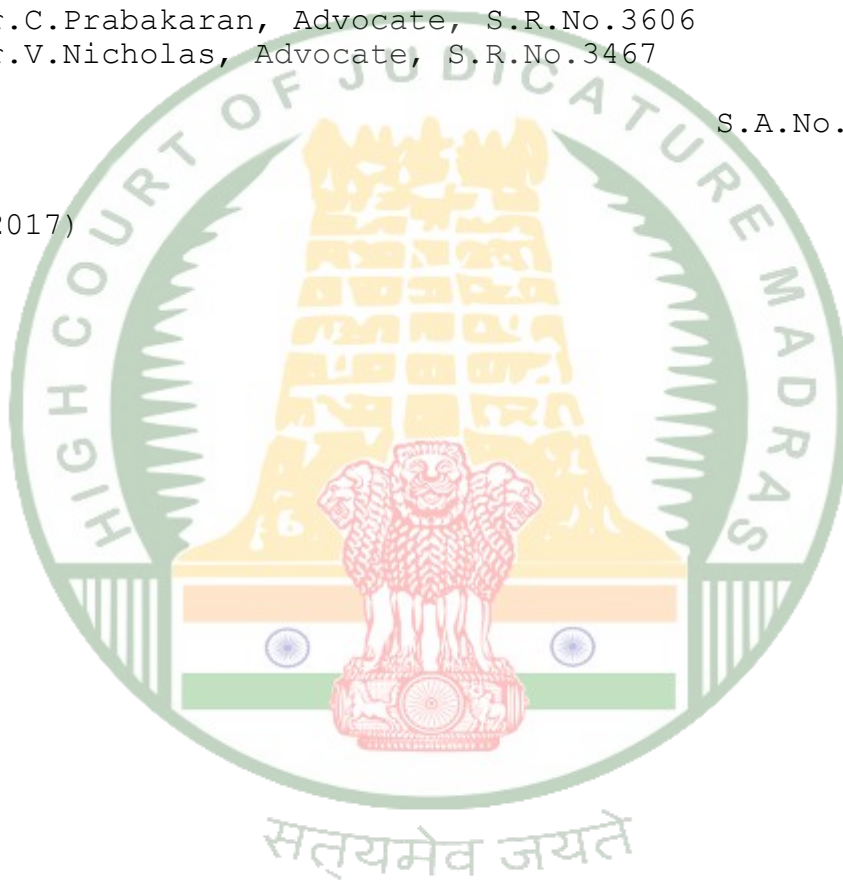
1. The District Munsif,  
Krishnagiri.
2. The Additional Special Judge,  
Krishnagiri.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.3606

+1cc to Mr.V.Nicholas, Advocate, S.R.No.3467

S.A.No.699 of 2016

SR(CO)  
CA(13/02/2017)



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