

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.956 of 2016
and
C.M.P.No.19535 of 2016

Seenivasan ...1st Defendant/Appellant/Appellant

Vs

1.Pandiyaraja
2.Kathirvel

..Plaintiffs/Respondents/Respondents

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 06.04.2016 made in A.S.No.27 of 2015 on the file of the Subordinate Judge, Namakkal, confirming the judgment and decree passed in O.S.No.153 of 2010 dated 18.11.2014 by the Principal District Munsif, Namakkal.

For Appellant ... Mr.Venkatasamy Babu

JUDGMENT

Challenging the judgment and decree dated 06.04.2016 made in A.S.No.27 of 2015 on the file of the Subordinate Judge, Namakkal, confirming the judgment and decree passed in O.S.No.153 of 2010 dated 18.11.2014 by the Principal District Munsif, Namakkal, the present second appeal has been filed.

2.The suit has been laid seeking a decree for permanent injunction, placing reliance upon Ex.A1, which is a settlement deed executed in favour of the plaintiff by the deceased Chinnammal on 17.03.1989. The defence taken in the written statement by the appellant being the first defendant is that the said Chinnammal, under Ex.B1, cancelled the earlier registered settlement deed on 03.12.2008 followed by the creation of unregistered Will under Ex.B2 dated 23.12.2008. Incidentally, she died on 24.12.2008, while being sick and bed ridden for quite some time.

3.The Courts below decreed the suit inter alia holding that Ex.A1, which is not in dispute, is an irrevocable settlement deed, as seen from the covenants made therein. Chinnammal has stated that she could not cancel, change or renew the settlement made in future and if done, such an action would be without authority of law. Thus, Ex.B1 was held to be one without authority of law, being an unilateral action on the part of the deceased Chinnammal. Incidentally, the Will relied upon viz., Ex.B2 was also not accepted. While doing so, it was held that Ex.B2 has not satisfied the parameters required under Section 63 of the Indian Succession Act r/w 68 of the Indian Evidence Act. Challenging the same, the present appeal has been filed by formulating the following substantial questions of law:

(a)Whether the Courts below are correct in law in decreeing the suit based on Ex.A1 settlement deed dated 17.03.1989 when the settlee herself have no title to the entire suit property?

(b)When there is dispute to the title of the suit property and when there is no pleading with respect to declaration of title to the suit property, whether the Courts below are correct in law in decreeing the suit?

(c)Whether the Courts below are correct in law in not considering the evidence of D.W.2 and D.W.2 supported by documents and the circumstance under which Ex.B1, cancellation deed dated 03.12.2008 and Ex.B2 Will dated 23.12.2008 were executed?

4.Learned counsel appearing for the appellant submits that the settlement deed has not been acted upon. The appellant is in possession of the suit property. The deceased Chinnammal was living with the appellant. A factual error has been committed by the Courts below with respect to the motive and evidence given. Thus the judgment and decree rendered are to be reversed.

5.Both the Courts have considered Ex.A1 in the right perspective. When Ex.A1 being a registered document, having been accepted by the appellant, the covenants and the words mentioned therein cannot be disputed. The Courts below have rightly made reliance on the statement made to the effect that it is an absolute settlement. Thus Ex.B2 was rightly eschewed. Taking note of the fact that Chinnammal died on the next day of execution of Ex.B2, which is an unregistered Will, the Courts below have held that the evidence given in support of it lacks credibility to the satisfaction of the Court.

6.In such view of the matter, this Court does not find any substantial question of law, warranting interference. However, it is made clear that if the appellant is of the view that Chinnammal herself does not have any absolute title over the

suit property, the same would constitute a different cause of action, for which, it is well open to him to agitate it in the manner known to law. Accordingly, the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CCC)

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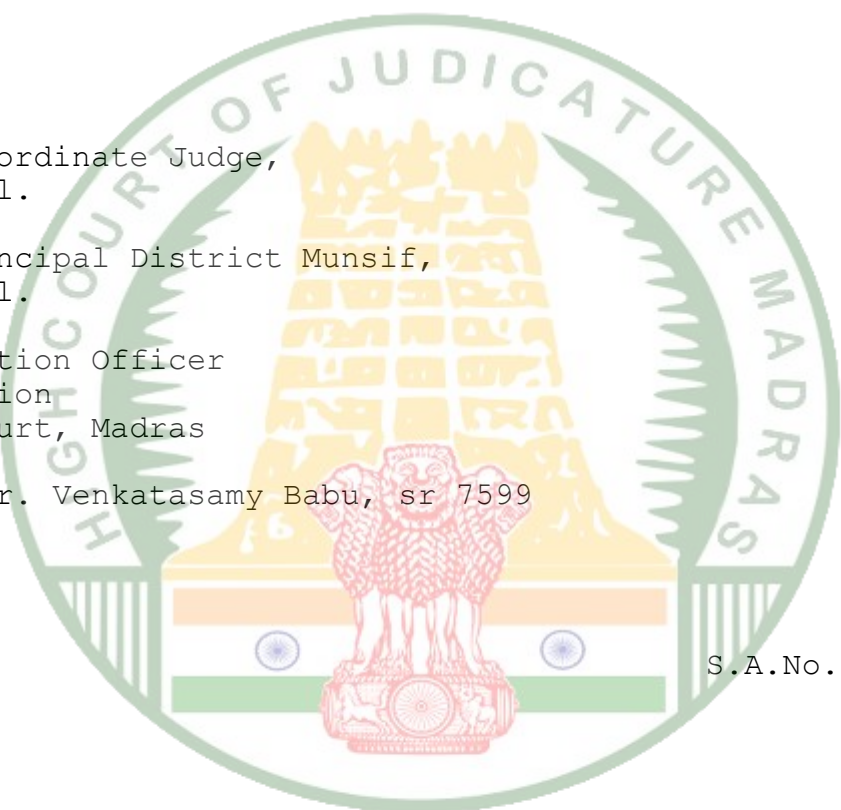
Sub-Assistant Registrar

To

1. The Subordinate Judge,
Namakkal.
 2. The Principal District Munsif,
Namakkal.
 3. The Section Officer
VR Section
High Court, Madras
- +1 CC to Mr. Venkatasamy Babu, sr 7599

PVS (CO)
sp/4/5

S.A.No.956 of 2016



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