

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.893 of 2006

S.Rajanna

... Appellant/Plaintiff

Vs

1.S.K.Sidde Gowdu

2.S.Umapathi

3.S.Sivakumar

4.S.Babu

5.K.C.Chandrappa

6.Munithayappa

7.M.Veerabadrappa

8.D.M.Narayanasamy

9.S.Nagaraju

10.S.Mahadevappa

11.E.Ramachandra Rao

... Respondents/Defendants

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree passed in O.S.No.143 of 2004 on the file of the learned I Additional District Judge, Krishnagiri dated 20.07.2006.

For Appellant	:	Mr.J.Hariharan
		For Mr.V.Nicholas
For Respondents 1 to 4	:	Mr.R.Vijayakumar
		No Appearance
For Respondent 5	:	Mr.S.P.Yuvan Kumar
		No Appearance
For Respondent 6	:	Not Ready in Notice
For Respondents 7 and 11	:	Mr.V.Raghavachari
		No Appearance
For Respondents 8 to 10	:	No Appearance

O R D E R

The unsuccessful plaintiff in the original suit O.S.No.143 of 2004 on the file of the learned I Additional District Judge, Krishnagiri, is the appellant before this Court. The appeal is filed challenging the Judgment and Decree dismissing the suit for partition and permanent injunction filed by the plaintiff. The parties are referred to in the same array as in the suit.

The brief facts necessary for the dismissal of the above first Appeal are herein narrated below:

2.The plaintiff had filed the suit for partition on the following Grounds:

a)The properties in suit are the ancestral properties of the plaintiff and defendants 1 to 4. The 1st defendant is the father of the plaintiff and the defendants 2 to 4.

b)The defendants 2 to 4 are unemployed and wanted to take away the entire properties. They along with the 1st defendant created nominal sale deed in favour of the defendants 5, 7 to 11.

c)On 06.12.1999 a nominal sale deed was executed in favour of the 5th defendant by the 1st defendant in respect of one of the suit properties. The plaintiff had listed out the various other transactions that had taken place in respect of the suit properties by the defendants.

d)The plaintiff would contend that these sale deeds are not binding on him and on 16.02.2004, he had invited the defendants 1 to 4 to effect an amicable partition of the properties which they failed to do so and the 1st defendant had instigated the 11th defendant to take possession of the suit properties covered under the sale deed dated 19.03.2003 and the 11th defendant has also taken steps for the possession of those properties.

3.The respondents 1 and 2 have not filed any written statement and defendants 3 and 4 adopted the plaintiff's case and sought for partition of the suit properties. The 11th defendant was the only contesting defendant. It was his case that in respect of 5 items of the suit properties the plaintiff and defendants 1 to 4 had executed an agreement of sale dated 22.08.2002 in his favour and the total sale consideration was fixed at Rs.6,59,280/- and the sum of Rs.5,00,000/- was paid as advance under the terms of the agreement. It was further agreed that the plaintiff and the defendants 2 to 4 would discharge the various debts in respect of the properties and thereafter execute the sale deed after receiving the balance sale consideration.

4.The 11th defendant would contend that after paying the sum of Rs.5,00,000/- as advance the plaintiff and the defendants 2 to 4 did not cooperate in executing the sale deed. Therefore,

the sale deed was executed by the 1st defendant alone on 19.03.2003.

5.The 11th defendant had contended that the present suit was a collusive one by the plaintiff and the defendants 1 to 4 to knock off the huge money paid by the 11th defendant, therefore, he sought for a dismissal in respect of the properties which had been sold to him. Ultimately, the Trial Court had partly decreed the suit by granting a partition only with reference to the properties not covered under EX.B.2 sale deed dated 19.03.2003.

6.Challenging the same the plaintiff is before this Court. Heard, Mr.J.Hariharan, learned counsel for the appellant. He would vehemently contend that the sale deed EX.B.2 is not a valid sale deed since the 11th defendant has not got the sale deed executed by the plaintiff and the defendants 2 and 4 and has only obtained the sale deed from the 1st defendant. He would further contend that he had not received any amount from out of the advance and it was only the 1st defendant who had receive the entire sale consideration. Therefore the sale deed was not binding upon the plaintiff.

7.He would also contend that having got an agreement of sale from the plaintiff as well as defendants 2 to 4, the sale deed executed only by the 1st defendant is not binding on the plaintiff. He would therefore contend that the learned I Additional District Judge, Krishnagiri erred in rejecting the suit with reference to the properties which had subject matter of EX.B.2. The point for consideration in the above first appeal is whether EX.B.2 sale deed is binding on the plaintiff and he is not entitled to a partition in respect of the properties covered in EX.B.2 sale deed.

8.Heard the arguments and perused papers. On a perusal of EX.B.1 agreement of sale dated 22.02.2002 it is seen that the plaintiff has also executed the said deed. This fact is also admitted by him when he had given evidence as P.W.1. The Trial Court has also extracted the relevant portion of the evidence which is also taken note of by this Court.

9.It is also evident from the cross examination of P.W.1 that he was also aware about the sale deed dated 19.03.2003 (EX.B.2). The 11th defendant had produced various receipts of the Cooperative Bank to show that the debts had been cleared and it is the advance given by the 11th defendant which has been used for discharging these debts.

10.In the light of such overwhelming evidence both documentary and oral, I find no infirmity or error in the

Judgment and Decree of the learned I Additional District Judge, Krishnagiri in O.S.No.143 of 2004. Accordingly, A.S.No.893 of 2006 is dismissed and the Judgment and Decree in O.S.No.143 of 2004 stands confirmed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

kan

To

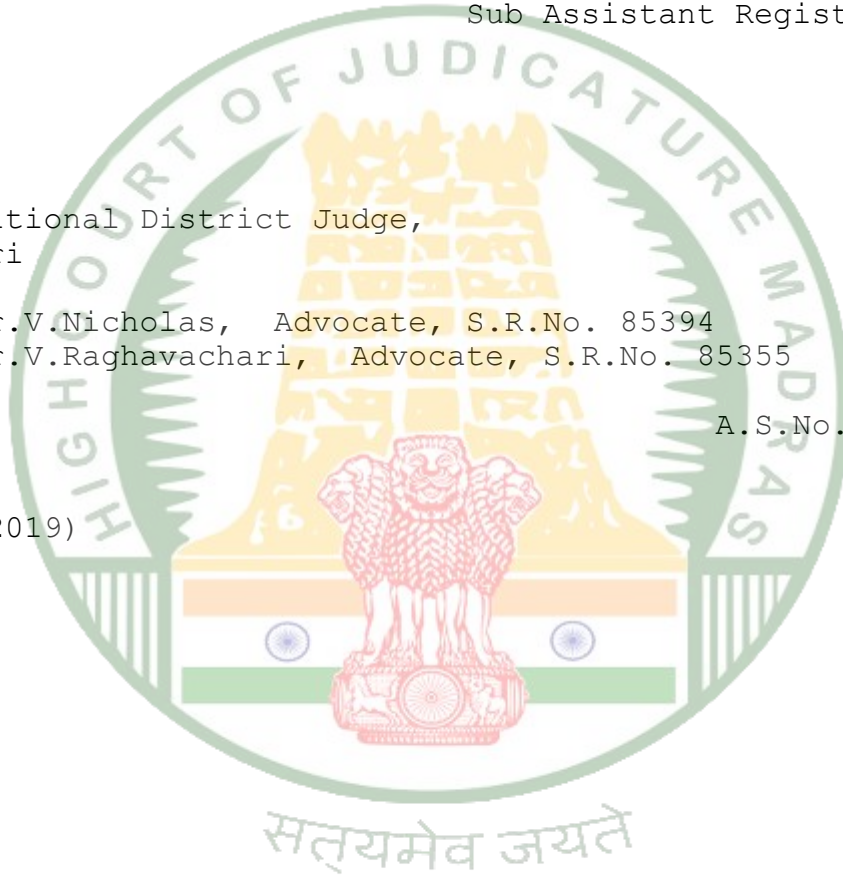
The I Additional District Judge,
Krishnagiri

+1cc to Mr.V.Nicholas, Advocate, S.R.No. 85394

+1cc to Mr.V.Raghavachari, Advocate, S.R.No. 85355

A.S.No.893 of 2006

TM(CO)
GN(01/02/2019)



WEB COPY