

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.252/2018 and CMP.No.6420 of 2018

1.Chinnathai @Thaiyammal
W/o.Muthu Chettiyar

2. Vadivel
S/o.Late Muthu Chettiyar

3. Santhi
W/o.Vadivel
All are residing at D.No.5/58,
Servampalayam,
Rakkipatti Post,
Vembadithalam Via,
Salem District.

..Defendants/Appellants/Appellants 1, 5 & 6

Versus

1. Saroja

..Plaintiff/1st Respondent/1st Respondent

2. Samburanam

3. Kamala

4. Jagadeesh

..Defendants 2 to4 /Respondents 2 to 4 /Respondents 2 to 4

Prayer: Second Appeals filed under section 100 of the Code of Civil
Procedure to set aside the Common Judgment and Decree passed in

A.S.No.1 of 2016 dated 17.03.2017 confirming the Judgment and Decree

passed by the learned Principal Subordinate Judge, Salem in O.S.No.343 of 2012 dated 17.10.2014.

For Appellants : Ms.J.Prithvi

JUDGMENT

By consent, this second appeal is taken up for final disposal.

2 The unsuccessful defendants 1, 5 and 6, who lost before the Courts below, are the appellants herein.

3 The 1st respondent / plaintiff filed a suit in O.S.No.343 of 2012 on the file of Principal Subordinate Judge, Salem against the appellants as well as the rest of the respondents/defendants praying for preliminary decree for partition and separate allotment of 1/6th share in the suit A, B and C schedule properties. The suit, after contest, came to be decreed partly allotting 1/6th share in favour the 1st respondent in respect of A & B Schedule properties and in respect of C Schedule property is concerned, it was dismissed.

4 The defendants 1, 2 and 6 aggrieved by partly decreeing of the suit, filed an appeal in A.S.No.1 2016 on the file of the II

Additional District Judge, Salem vide impugned order dated 17.03.2017, the Appeal suit came to be dismissed and thereby, confirming the preliminary decree granted by the Trial Court and challenging the legality of the same, the defendants 1, 5 and 6 has filed this appeal.

5 The learned counsel appearing for the appellant / defendants 1, 5 and 6 would submit that admittedly under Ex.B3-Gift Settlement Deed, executed by 5th defendant in favour of his son pertains to some portion of the property in A and B Schedule property and under Ex.B4, settlement deed has been executed in respect of the C Schedule property by the 1st defendant and admittedly, though, it has been pointed out in the written statement that the plaintiff has failed to implead Mr.Parthiban, the suit is barred for non-joinder of necessary party. It is further submission of the learned counsel appearing for the appellant that a sum of 9,00,000/- (Rupees nine lakhs only) in cash was received from Muthuchettiyar and in the light of the same, the plaintiff is not entitled to any share in respect of A and B Schedule properties and the Trial Court has failed to formulate the necessary issue for consideration and so also the Lower Appellate Court in not formulating necessary points for consideration and hence, prays for interference.

6 The Trial Court on a consideration and appreciation of oral and documentary evidence, has recorded the finding that there is no documentary evidence or release deed to prove as to the parting with the sum of Rs.9,00,000/- (Rupees nine lakhs only) and further recorded the findings that no contra evidence has been available as to the payment of Rs.9,00,000/- in lieu of plaintiff share and her husband by the 1st defendant.

7 The Trial Court also recorded the finding that the plaintiff did not let in documentary evidence to prove that C Schedule property was purchased by Muthu Chettiyar and held that she is not entitled to any share in the suit property and thereby granted preliminary decree for partition and separate possession in respect of 1/6th share in the A & B Schedule properties, dismissed the suit in respect of the C Schedule property, vide order dated 17.10.2014.

WEB COPY

8 The Lower Appellate Court found that the defendants 1, 5 and 6 though pleaded that even for about 10 years ago, the plaintiff and her husband approached the 1st defendant and requested her share in view of discharge of lands and thereby paid a sum of Rs.9,00,000/- which was

accepted and found that no documentary evidence has been available to that effect.

9 The Lower Appellate Court has also taken note of the fact that the defendants had executed a Release Deed – Ex.B2 dated 02.01.2012 in favour of the 5th defendant and thereby relinquished her 4/6th share in the suit properties in favour of the 5th defendant, which also proved that the plaintiff is entitled to 1/6 share in the C Schedule property.

10 In the Memorandum of Grounds of Appeal in both appeals, the following substantial questions of law are raised for consideration:-

- Whether or not the Courts below have decreed the suit perversely without considering the evidence of DW2 who is the eye witness when plaintiff received Rs.9,00,000/- cash from Muthu Chettiyar?
- Whether the Court below are justified in decreeing the suit with respect to A and B Schedule properties without the presence of Parthiban, who is the Settle of A and B Schedule properties?
- Whether the Courts below are justified in not framing

the issue when the Defendant has raised that the plea that the suit is bad for nonjoinder of necessary parties.

11 This Court has also gone through the Gift Settlement Deed as Ex.B3 and also perused the testimonies of witnesses especially DW1 & DW2.

(a) DW1 in the course of her cross examination had conceded that the 1st respondent / plaintiff is entitled to 1/6 share.

(b) DW2, in her cross examination have not stated anything about Ex.B2 in respect of A and B Scheduled properties, but she has spoken only about C Schedule property despite the release by the plaintiff in lieu of acceptance of Rs.9,00,000/-.

12 In the light of the evidence available, this Court is of the considered view that the findings recorded by the Courts below cannot be termed as perverse or based on no evidence. The Trial Court has dismissed the suit insofar as the C Schedule properties is concerned and the 1st respondent / plaintiff did not prefer any appeal challenging the said portion of the decree.

13 This Court, on an independent application of mind and on perusal of the entire materials placed before it, is of the considered view, that no question of law, leave alone the Substantial Question of Law arose for consideration .

14 In the result, the Second appeal is dismissed at the admission stage itself confirming the Judgment and Decree passed by the learned II Additional District Judge, Salem in A.S.No.1 of 2016 dated 17.03.2017 in confirming the Judgment and Decree of the learned Principal Subordinate Judge, Salem in O.S.No.343 of 2012 dated 17.10.2014. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

06.04.2018

rka

सत्यमेव जयते

WEB COPY

To

- 1.The II Additional District Judge, Salem
- 2.The Principal Subordinate Judge, Salem.

Copy to:

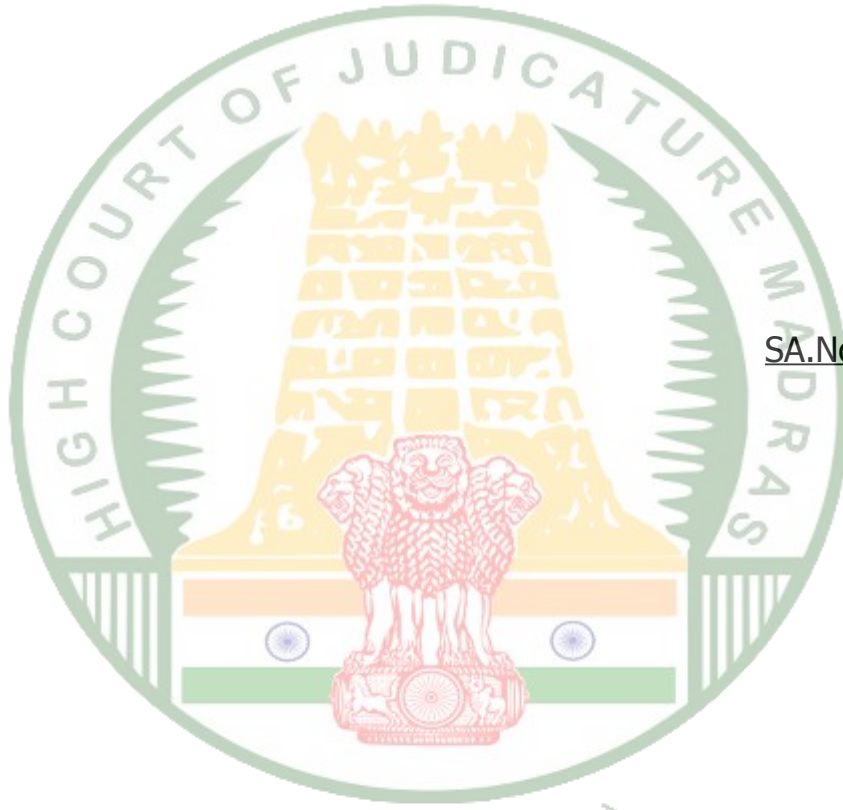
The Section Officer
VR Section, High Court,
Madras.



WEB COPY

M.SATHYANARAYANAN, J.,

rka



SA.No.252/2018

सत्यमेव जयते

WEB COPY

06.04.2018