

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2018

PRONOUNCED ON : 21.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No. 1586 of 2003

1.Meenatchi
2.Gunabushani
3.Selvaraju
4.Arumugam
5.Kalaiaarasi

...
Vs.

Appellants

1.Kumaresan
2.Jayalakshmi
3.Jayabalan
4.Ravichandran
5.Indirani @ Mannangatti

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 18.02.2003 passed in A.S.No.69 of 2001 on the file of the III Additional District Court, Pondicherry, reversing the Judgment and Decree dated 28.04.2000 passed in O.S.No.1716 of 1996 on the file of the District Munsif Court, Pondicherry.

For Appellants : Ms. G.Sumitra

For Respondent : Mr.T.M.Kannan
No.1

For Respondent : No appearance
Nos.2, 4 & 5 set exparte
(vide order dt.27.02.2018)

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 18.02.2003 passed in A.S.No.69 of 2001 on the file of the III Additional District Court, Pondicherry, reversing the Judgment and Decree dated 28.04.2000 passed in O.S.No.1716 of 1996 on the file of the District Munsif Court, Pondicherry.

2. Suit has been laid by the plaintiff for declaration, possession and permanent injunction.

3. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to A17 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B38 were marked.

4. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, it is found that the trial Court has chosen to dismiss the suit laid by the plaintiff. As against the same, the plaintiff has preferred the first appeal and the first appellate Court, on an appreciation of the materials placed, was pleased to declare that the plaintiff is the owner of 712 sq.feet of the total extent of the properties described in A & B schedules in the plaint and accordingly, held that the plaintiff has to seek partition and separate

possession of the said property by separate proceedings and accordingly, disposed of the appeal in favour of the plaintiff. Impugning the same, the defendants 3 to 7 have preferred this second appeal.

5. After hearing the counsel for the parties concerned, it is found that the issues involved in the matter and concerning the parties had been already dealt with at length in the earlier proceedings laid in O.S.No.383 of 1979 on the file of the Additional District Munsif Court, Pondicherry and the judgement and decree passed in the suit had been confirmed by the Principal District Court, Pondicherry in A.S.No.102 of 2001 and also found to be confirmed by this Court in Second appeal No.1020 of 1992. Accordingly, it is found that the first appellate Court has chosen not to again discuss the already determined issues involved between the parties in the above said proceedings and accordingly, rightly held that the suit properties along with the other properties are only communaute properties of Sengeni Chettiar and accordingly, there had been division as regards the said properties between the legal heir of Sengani Chettiya viz., Krishappa chettiar and Pachammal, wife of Vadivel Chettiar and accordingly, it is found that the first appellate Court determined that the suit properties were inherited by the sons of Sengani Chettiyar as communaute properties and there had been division between Krishappa Chettiar and Pachammal, wife of Vadivel Chettiar during the year 1944.

6. The plaintiff has also projected that there has been a partition amongst the legal heirs of Krishappa Chettiar subsequently and in this connection, it is seen that a partition deed has been projected as Ex.A1. The first appellate Court finding that Ex.A1 deed is an unregistered document and the first page of the said deed has not been signed by any one of the parties thereto, accordingly and also in my considered opinion, did not place reliance upon the said deed and resultantly, held that the said partition projected by the plaintiff is invalid and unacceptable and accordingly, held that there has been no partition on 23.09.1973 between the sons of Krishappa Chettiyar and the partition pleaded is inadmissible and invalid in law.

7. Further, it is found by the first appellate Court by giving reasons that though one of the sons of Krishnappa Chettiar viz., Perumal had executed two release deeds marked as Exs.A2 and B16 respectively, finding that Ex.A2 is anterior in point of time determined same to be a valid document and thereafter, holding that Perumal ceased to have any right in respect of the same, held that the subsequent release deed Ex.B16 is invalid and accordingly, found that it is only the release deed dated 15.04.1996 executed by Perumal in favour of his brother Gopal is valid and also noted that Ex.B16 release deed in favour of Selvarasu had been created for the purpose of this case and would not confer any title on Selvarasu, the other brother and accordingly, determined the said point in favour of the plaintiff.

8. On the point, as to whether Gopal had executed a release deed dated 26.11.1986 in favour of Subbarayan and the legal consequences thereof, the first appellate Court, after giving acceptable and valid reasons, found that the above said release deed marked as Ex.B17 is a valid one and by way of the same, found and determined that an extent of 268 sq.ft, out of an area of 1071 sq.feet had been released and accordingly, determined the said issue.

9. As regards the claim of the plaintiff that he has acquired title to the suit property by way of two sale deeds executed by Gopal and also by Gopal and Perumal jointly, the first appellate Court finding that Gopal would be the owner of only $\frac{1}{4}$ share in the entire property and also to the remaining share after his release deed in favour of Subbarayan, resultantly held that Gopal being the owner of an extent of 712 sq.ft in the entire property and accordingly, further finding that the plaintiff would be entitled to lay a claim of title only to the above said extent of 712 sq.ft in the property, determined that the plaintiff is the owner of the extent of only 712 sq.ft in the entire plaint schedule property viz., 1962 sq.ft and accordingly, determined the above said issue in favour of the plaintiff.

10. It is thus found that the first appellate Court has analysed the factual and legal aspects of the matter put forth by the plaintiff as well as

the contesting defendants in the matter and accordingly, noted that the deeds involved and projected in the matter would be valid only to the extent of shares held by the parties concerned as on the dates of the execution of the said documents and accordingly, determined that as the plaintiff had acquired right over an extent of 712 sq.ft the entire suit property and not to other extent as claimed by him, disposed of the appeal by holding that the plaintiff is the owner of 712 sq.ft in the entire extent and directed the plaintiff to work out his further remedy by levying a partition suit as per law.

11. Impugning the above said determination of the first appellate Court, the present second appeal has been laid. The main arguments projected by the counsel appearing for the appellants is that no reason has been given by the first appellate Court for deviating from the findings and conclusions arrived at by the trial Court in rejecting the plaintiff's case. However, the above said finding does not merit acceptance. As above discussed and further, on perusing the judgment of the first appellate Court, it is seen that the first appellate Court has analysed the issues involved in the matter in all aspects and accordingly, given valid reasons and further determining the rights of the parties, which, they had held at the time of execution of the various documents involved in the matter and finding that all the release deeds projected in the matter do not confer the rights to other parties as such and accordingly, concluded

that the plaintiff, at the most, would be entitled to only obtain 712 sq.feet of the total extent of 1962 sq.ft in the plaint schedule properties. In such view of the matter, the arguments put forth that the judgement and decree of the first appellate Court is vitiated on account of the absence of reasons for upholding the plaintiff's case in part is found to be untenable and rejected. It is further found that the first appellate Court has rightly discussed the validity of the release deed Ex.A2 executed by Perumal in favour of Gopal as well as the documents projected by the defendants in all aspects and when the issues involved in the matter had already been determined in the earlier proceedings in between the parties as above pointed out, which culminated in the second appeal proceedings of this High Court, it is found that the first appellate Court has rightly gone into the issues both factually as well as legally and accordingly, disposed of the matter granting only a limited right in respect of the plaint schedule property in favour of the plaintiff.

12. In the light of the above position, it is found that there is no involvement of any question of law much less, any substantial question of law in this second appeal and accordingly, the second appeal is found to be devoid of merits and resultantly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No

Internet : Yes / No

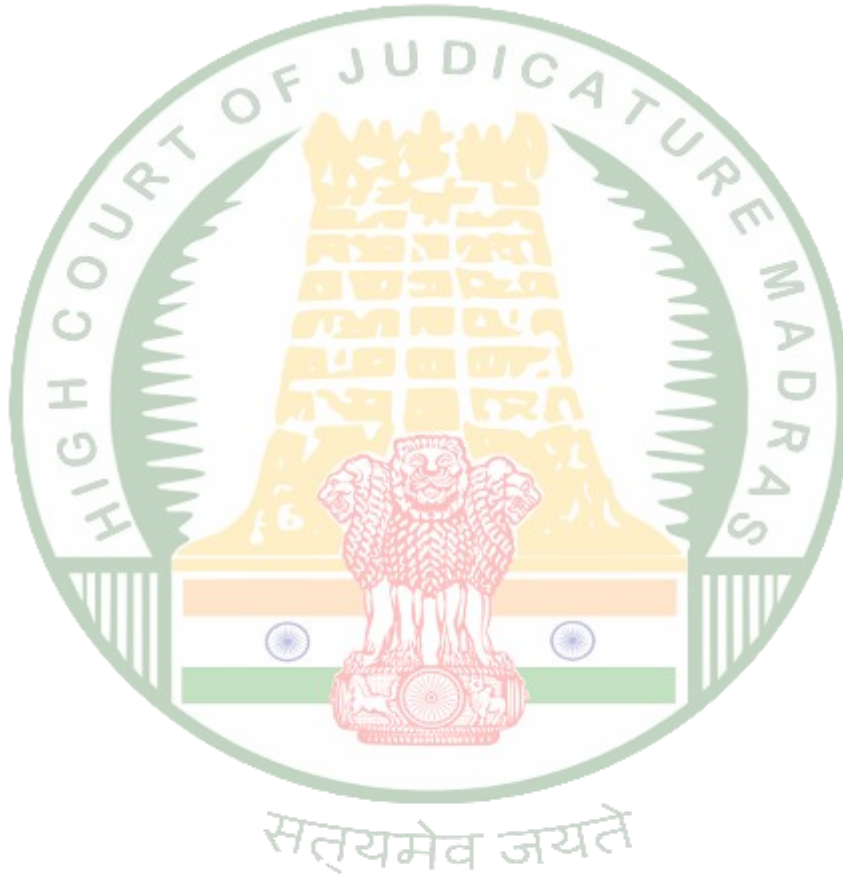
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<http://www.judis.nic.in>

21.03.2018

To

1. The III Additional District Court, Pondicherry.
2. The District Munsif Court, Pondicherry.
3. The Section Officer, V.R. Section, High Court, Madras.



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T.RAVINDRAN, J.

sms



**Pre-Delivery Judgment made
in S.A.No. 1586 of 2003**

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