

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2018

PRONOUNCED ON : 25.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1802 of 2004

1. Unnamalai ammal
2. Krishnamurthi

...
Vs.

Appellants

1.G.Kannan
2.Arumugam

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 21.04.2004 passed in A.S.No.11 of 2003 on the file of the Subordinate Court, Panruti, reversing the Judgment and Decree dated 12.03.2003 passed in O.S.No.1545 of 1982 on the file of the District Munsif Court, Panruti.

For Appellants : Mr.R.Muralidharan

For Respondent : Mr.T.S.Baskaran
No.1

Respondent : No appearance
(Set exparte vide
order dated.13.06.2018)

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 21.04.2004 passed in A.S.No.11 of 2003 on the file of the Subordinate Court, Panruti, reversing the Judgment and Decree dated 12.03.2003 passed in O.S.No.1545 of 1982 on the file of the District Munsif Court, Panruti.

2. The second appeal has been admitted on the following substantial question of law:

" Whether the reversing judgment of the lower first appellate Court is vitiated for not having considered the entire evidence to decide the case and to apply the correct principles of law applicable to the facts of the case?"

3. Considering the scope of the controversy involved in this second appeal lying in a narrow compass, it is unnecessary to dwell into the facts involved in detail.

4. Suffice to state that the suit has been laid by the plaintiff for declaration and permanent injunction or in the alternative for recovery of possession.

5. The plaintiff claims title to the suit property by virtue of the sale deed dated 03.04.1974 executed by Perumal Gounder. The abovesaid sale deed has come to be marked as Ex.A1. Briefly stated, according to the plaintiff, an extent of 0.36 1/2 cents in the suit survey field and the other properties belonged to Perumal Gounder and Govindasamy Gounder, the first defendant, who are the brothers and according to the plaintiff, the brothers abovestated effected oral partition in respect of the

suit property and the other properties belonging to them and in the said partition, it is stated that in respect of the abovesaid 0.36 1/2 cents, the eastern 1/2 share was allotted to Perumal Gounder and the western 1/2 share was allotted to the first defendant and accordingly, forming ridges for the purpose of demarcating their respective shares in respect of the abovesaid property, it is stated that the brothers had been enjoying their respective portions and accordingly, it is stated that Perumal Gounder had sold the eastern 1/2 share measuring 0.18 1/4 cents to the plaintiff and accordingly, it is stated that the plaintiff had taken the possession of the suit property and enjoying the same and inasmuch as the defendants, without any authority, attempted to interfere with his possession and enjoyment and grab the suit property, it is stated that the plaintiff had been necessitated to lay the suit for appropriate reliefs.

6. The defendants have taken various defences and mainly, it is contended that there has been no oral partition between the brothers Perumal Gounder and Govindasamy Gounder, the first defendant and therefore, the alleged claim of the plaintiff that he has purchased the suit property from Perumal gounder is not valid. Further, it is contended by the defendants that Perumal gounder was mentally undeveloped and physically infirm and weak and therefore, he could not have alienated the suit property to the plaintiff as claimed and on that basis also, impugned the title deed projected by the plaintiff for seeking the reliefs claimed in

the suit. Further, it is also contended by the defendants that the suit property had been leased out to the 7th defendant and accordingly, it is stated that Perumal Gounder as well as the first defendant in collusion with the plaintiff are attempting to evict the lessee from the suit property under the guise of the civil suit and hence, the plaintiff is not entitled to the reliefs sought for.

7. As regards the ownership of the extent of 0.36 1/2 cents in the suit survey field as belonging to Perumal Gounder and Govindasamy Gounder, the first defendant, there is no dispute as such. Thus, it is found that the brothers abovesaid would be entitled to equal share in respect of the abovesaid property. Now, it is the case of the plaintiff that following the oral partition effected between them, the suit property had come to be alienated to him by Perumal Gounder by way of Ex.A1 sale deed. To evidence that, Perumal Gounder and his brother Govindasamy gounder, the first defendant had become divided, the sale deed dated 25.10.1976 marked as Ex.A2 has been projected by the plaintiff. It is found that by way of Ex.A2 sale deed, the plaintiff has purchased another divided property from the first defendant Govindasamy Gounder and on a perusal of the abovesaid deed, it is found that there is a clear averment contained in the document that the brothers viz., Perumal Gounder and Govindasamy Gounder had become divided by way of effecting oral partition and such being the position, it is found that the defence

projected by the defendants that there has been no oral partition between the abovesaid two brothers as such cannot be accepted.

8. Be that as it may, when it is found that the abovesaid two brothers are entitled to the total extent 0.36 1/2 cents in the suit survey field, even assuming for the sake of arguments that no oral partition had been effected between them as projected by the plaintiff, still, inasmuch as Perumal gounder would be entitled to equal 1/2 share in the abovesaid extent, accordingly, it is found that Perumal Goudner would be entitled to convey his share in the abovesaid total extent to the plaintiff and on that basis also, it is seen that the plaintiff would be entitled to seek title to the suit property or at least, the equal 1/2 share in the total extent abovesated and it is thus found that the defendants have taken untenable pleas to resist the plaintiff's case.

9. The contention of the defenants that Perumal Gounder had been all along mentally upset, physically weak and infirm and therefore, he could not have executed the sale deed in favour of the plaintiff also cannot be accepted. Considering the materials placed on record and from the registered Bokkiam document dated 14.05.1958 marked as Ex.A15, it is found that both Perumal gounder and Govindasamy Gounder, the first defendant had jointly executed the abovesaid Bokiam document in favour of one Sadaiya gounder and considering the fact that the said document

had been registered, accordingly, it is found that the case of the defendants that Perumal Gounder had been all along mentally undeveloped as such falls to the ground and cannot be accepted. Equally, it is found that Perumal gounder in view of his stable mental faculties, has sold his share of the property i.e. the suit property in favour of the plaintiff and accordingly, it is found that the plea that Perumal Gounder is not in good condition as such cannot be believed and accepted and rightly disbelieved by the first appellate Court.

10. To evidence that Govindasamy gounder, the first defendant had been in the occupation and enjoyment of the entire property belonging to the family has also not been established by the defendants as such and on the other hand, when it is found that the plaintiff has placed ample materials to show that pursuant to Ex.A1, he has been in the possession and enjoyment of the suit property in his own right by paying kist etc., which could be evidenced from the kist receipts projected by the plaintiff, accordingly, it is found that the defendants are unable to place any valid document to establish their claim of possession and enjoyment of the suit property.

11. Though the defendants would claim that the 7th defendant had been let on lease in respect of the suit property, with reference to the abvoesaid claim, as rightly determined by the first appellate Court, there

is no material worth acceptance whatsoever placed by the defendants and as abovestated, the defendants have not placed any reliable material to hold that they had been in the possession and enjoyment of the suit property as such in their own right as claimed by them. Accordingly, it is found that the lease arrangement projected by the defendants in respect of the suit property is a false one and cannot be believed and rightly rejected by the first appellate Court.

12. In the light of the above discussions, it is found that the first appellate Court has, on a proper appreciation of the materials placed on record, both oral and documentary, finding that the trial Court has dismissed the plaintiff's case without assigning proper and convincing reasons and also without properly appreciating the materials placed on record, rightly set aside the judgment and decree of the trial Court and in such view of the mater, no interference is called for in the judgment and decree of the first appellate Court reversing the judgment and decree of the trial Court and thereby granting the reliefs in favour of the plaintiff as prayed for. The substantial question of law formulated in the second appeal is accordingly answered in favour of the plaintiff and against the defendants.

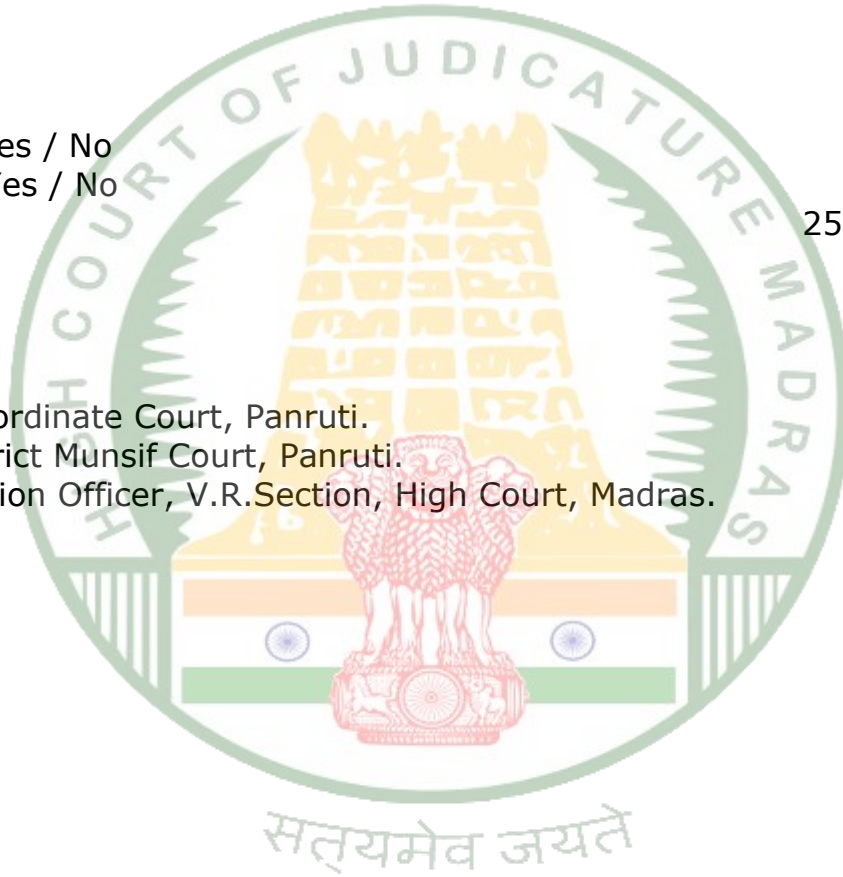
For the reasons aforesaid, there is no merit in this second appeal and is accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
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25.06.2018

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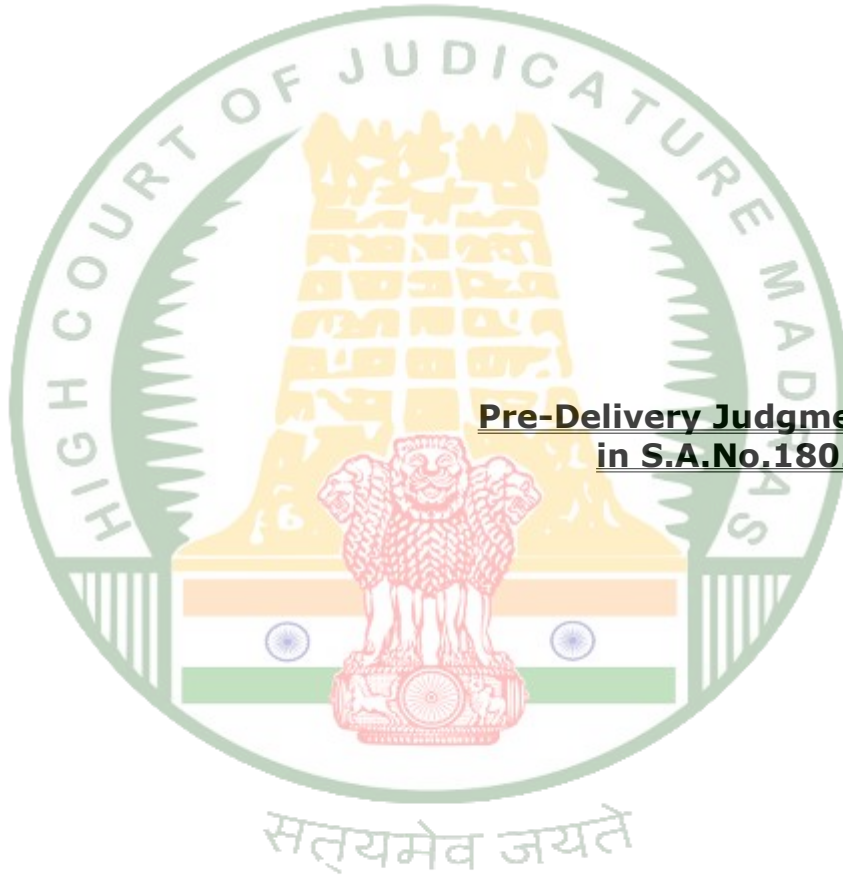
1. The Subordinate Court, Panruti.
2. The District Munsif Court, Panruti.
3. The Section Officer, V.R.Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1802 of 2004**

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