

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.12.2017

PRONOUNCED ON: 05.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.166 of 2016

S.Martin

Plaintiff

Vs

1. J.Megala

2. The Sub Registrar, Sembium, Chennai-11

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules and Order VII Rules 1 and 2 of CPC, for the reliefs as stated therein.

For Plaintiff : Mr.Srinivas

For Defendants : Set Exparte

JUDGEMENT

This civil suit had been filed, seeking a judgement and decree, granting declaration that the settlement deed, dated 28.1.2011 registered as Document No.700 of 2011, alleged to have been executed by the Plaintiff in favour of the 1st Defendant in the office of the 2nd Defendant is false, forged, invalid, illegal and a void document and that the same is not binding on the Plaintiff and the B-Schedule properties and granting injunction, restraining the

1st Defendant from in any manner acting upon the aforesaid settlement deed and creating any transfers or encumbrances on the properties more fully described in the B-Schedule and dealing with the same in any manner and for costs of the suit.

2. The case of the Plaintiff as set out in the plaint, is as follows:-

a. The Plaintiff is a businessman and his father Santiago, who is aged about 80 years, is residing along with the Plaintiff at Coimbatore and the mother of the Plaintiff expired in 2007. Esabella Rosemary, S.Savarimuthu, S.Vedhamuthu, S.Joseph and Fathima Mary are the sons and daughters of the parents of the Plaintiff. Leema Rose is the wife of the Plaintiff and John Britto is her elder brother, who married to one Glory. The Plaintiff purchased Acre 1.08 cents of land in S.No.43/9 of Uthankudi Village in Madurai District and Acre 0.11 cents of land in S.No.43/11 and Acre 0.33 cents of land in S.No.130/9, acre 0.33 cents of land in S.No.74/5B and Acre 0.40 cents of land out of Acre 0.70 cents in S.No.131/1A and Acre 0.56 cents of land in S.No.92/3 and Acre 0.21 cents of land in S.No.92/4 and Acre 1.37 cents of land in S.No.73/3 and Acre 3.18 cents of land in S.No.74/1, and Acre 0.7 cents of land in S.No.75/1 of the same Village. The Plaintiff had also purchased Acre 1.92 cents of land in Narasingham Village in S.No.152/3 and 152/3B and Acre 0.20 cents of land in S.No.157/2 and Acre 0.11 cents of land in S.No.157/3 of the same Village and Acre 5.24 cents of land in RS.No.8 of Ezhanthakulam Village in Madurai District. The Plaintiff has been in possession and enjoyment of the said properties.

b. The Plaintiff sold Acre 3.18 cents of land covered by Patta No.228 in S.No.74/1 in Uthankudi Village to a Company called Daya Cyber Park Limited on 5.3.2010 by a registered sale deed in Document No.820 of 2010 in the Office of the Sub Registrar, Othakkadaai and there has been some litigation regarding the said property. While so, the Plaintiff received a legal notice dated 14.06.2011, stating the Plaintiff had executed a settlement deed in respect of the above properties more fully described in the Schedule in favour of the 1st Defendant by a settlement deed dated 28.1.2011 registered as Document No.700 of 2011. The Plaintiff never executed the said settlement deed and he does not know the 1st Defendant at all and he is no way related to her and he has never seen the 1st Defendant till this date. The Plaintiff had sent a reply dated 29.6.2011, denying the execution of the aforesaid settlement deed. The Plaintiff got a certified copy of the said settlement deed and found that the same had been registered in respect of the above properties. The signature found in the said document does not belong to him at all. The Plaintiff never appeared before the 2nd Defendant and executed any document on 28.1.2011. The photo and voter ID, bearing No.LYY1670657 of the Plaintiff was found to be affixed in the said document. Whereas the real voter ID number of the Plaintiff is WJB1036326. In the address shown in the voter ID produced before the Sub Registrar, the Plaintiff never stayed. Thumb impression fixed in the said documents also does not belong to him.

c. The said document reads that the Plaintiff settled one property in

Kolathur, namely, New Door No.15, Old Door No.100, Jeeva Street, Thenpazhani Nagar, Kolathur, along with the other properties in Madurai District. The Plaintiff is shown to have purchased the above property in Kolathur by a Deed of Sale dated 30.8.982 registered as Document No.4032 of 1982. The Plaintiff never purchased the said property at Kolathur and it does not belong to the Plaintiff. The 1st Defendant, who is totally unrelated and unknown to the Plaintiff had got a settlement deed executed in her favour in the Plaintiff's name. The 1st Defendant falsely claimed to be sister of the Plaintiff. A wrong document has been used to establish the Plaintiff's identity and a property in Kolathur, which was never owned by the Plaintiff, has been used to justify the registration of the said settlement deed. The said settlement deed is a false document created by commission of several criminal offences, like, cheating, forgery, impersonation, etc. punishable under IPC. The said document is false, fabricated, illegal and void ab initio. In such circumstances, this civil suit had been filed for the reliefs as stated above.

3. Service of notice on both the Defendants was completed. Affidavit of Service has also been filed in respect of the 1st Defendant. Substituted service by paper publications, court notice board and notice to last known address was also effected. However, no written statement had been filed by the 1st Defendant and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, Exparte Evidence was ordered to be recorded by the order of this court dated 20.06.2017.

4. The Plaintiff had filed the proof affidavit for his chief examination and receipt of 10 documents as documentary evidence to prove the suit claim. In the Exparte Evidence, the Plaintiff examined himself as PW.1 and marked Exs.P1 to P10 as documentary evidence.

5. Considering the oral and documentary evidence, this Court is of the view that the plaintiff has proved the suit claim and he is entitled for the reliefs, as prayed for. Accordingly, the civil suit is decreed as prayed for with costs.

05.01.2018

Index:Yes/No
Web:Yes/No
Srcm

1. List of Witnesses Examined on the side of the Plaintiff:-

1. PW.1 - S.Martin

2. List of Exhibits marked on the side of the Plaintiff:-

1. Ex.P1 is the sale deed dated 30.8.1982 bearing Document No.4032 of 1982, SRO Sembium, executed by Kasthuriammal in favour of Rajagopal Menon.

2. Ex.P2 is the sale deed dated 20.7.2001, bearing Document No.2944/2001, SRO Tamaraipatti, executed by A.R.Raman and Sons in favour of the Plaintiff.

3. Ex.P3 is the Deed of General Power of Attorney dated 5.3.2010 executed by the Plaintiff in favour of A.Sugumar.

4. Ex.P4 is the sale deed dated 5.3.2010 executed by the Plaintiff in favour of Daya Cyber Park Limited in Document No.820 of 2010, SRO, Othakadai.

5. Ex.P5 is the sale deed dated 15.3.2010 executed by the Plaintiff in favour of Daya Cyber Park Limited in Document No.993/2010, SRO Othakadai.

6. Ex.P6 is the settlement deed dated 28.1.2011 alleged to have been executed by the Plaintiff in favour of 1st Defendant in Document No.700 of 2001, SRO, Sembium.

7. Ex.P7 is the legal notice dated 14.6.2011 received by the Plaintiff.

8. Ex.P8 is the legal notice dated 14.6.2011 received by the Plaintiff.

9. Ex.P9 is the reply notice issued by the Plaintiff dated 29.6.2011

10.Ex.P10 is the copy of the Plaintiff's voter ID card.

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

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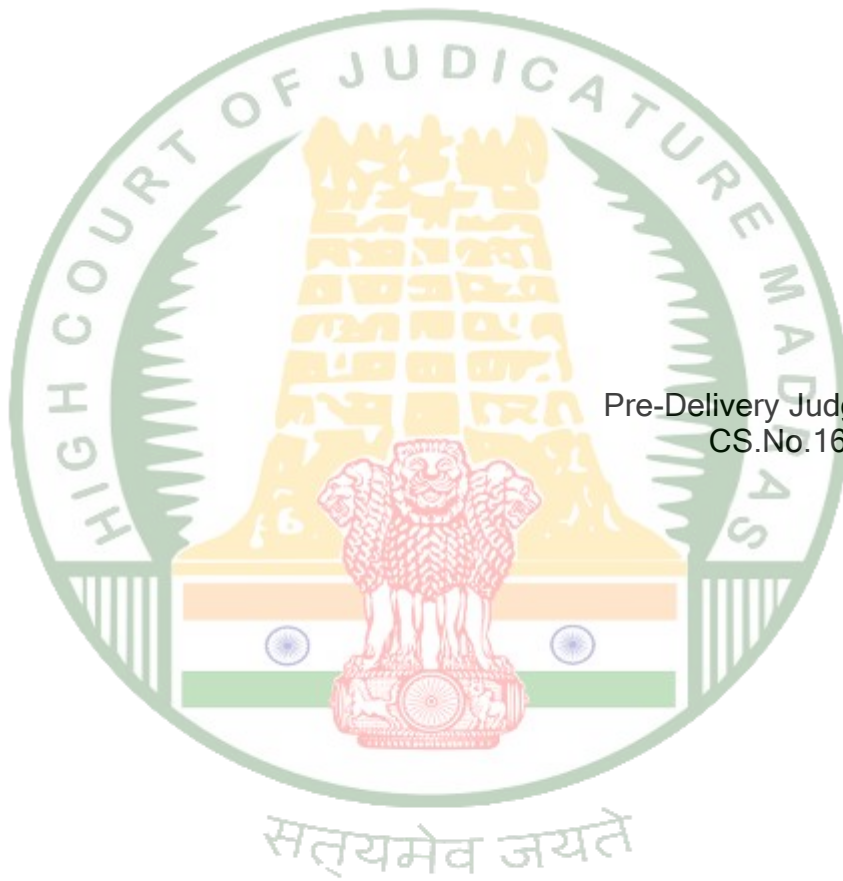
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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.166 of 2016

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