

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :20.03.2018

PRONOUNCED ON:05.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.430 of 2004

and

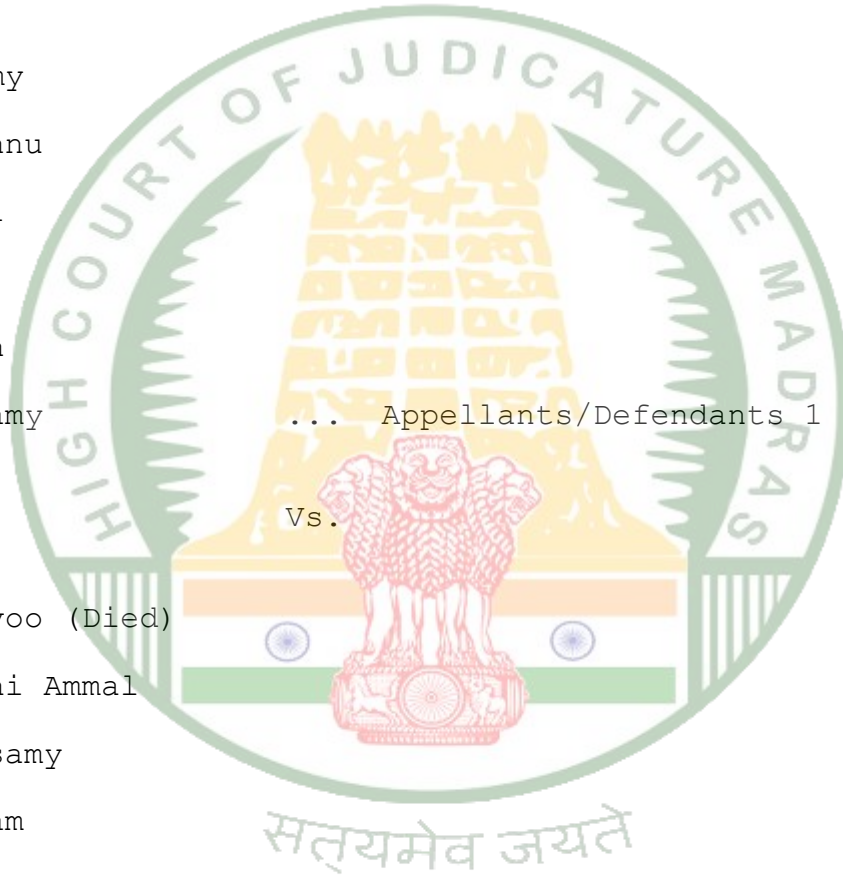
C.M.P.No.8454 of 2004

- 1.Guruswamy
- 2.Raju Kannu
- 3.Sivakami
- 4.Sumathi
- 5.Krishnan
- 6.Muthuswamy

... Appellants/Defendants 1 & 5 to 9

Vs.

- 1.S.Aiyavoo (Died)
- 2.Parvathi Ammal
- 3.Palanisamy
- 4.Singaram
- 5.Sankaran
- 6.Elumalaiyan
- 7.Sivakami
- 8.Gandhi
- 9.Jothi
- 10.Kollandaiyammal



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[RR3 to 10 brought on record
as LRs of the deceased R1 vide
order of Court dated 28.09.2012
made in CMP.Nos.679 to 681 of
2012 in S.A.No.430 of 2004]

... Respondents/Plaintiff & 3rd Defendant

Prayer:Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Additional District Judge [Fast Track Court IV, Erode) at Bhavani dated 28.07.2003 in A.S.No.17 of 2003 reversing the judgment and decree of the II Additional District Munsif Court at Bhavani dated 29.04.2002 in O.S.No.306 of 1991.

For Appellants : Mr.S.Mukundan
for M/s.Sarvabhauman Associates
For Respondents : Mr.N.Manokaran

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 28.07.2003 passed in A.S.No.17 of 2003 on the file of the Additional District Judge [Fast Track Court IV, Erode] at Bhavani reversing the judgment and decree dated 29.04.2002 passed in O.S.No.306 of 1991 on the file of the II Additional District Munsif Court at Bhavani.

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

i.Whether as per Section 52 of the Transfer of Property Act, 1883 any transfer of property pending suit is hit by the Doctrine of lis-pendens, whether the alleged sale in favour of the 1st respondent on 21.11.1990 during pendency of the suit in O.S.No.622 of 1990 is valid in law?

ii. Whether the lower Appellate Court is correct in law in reversing the judgment of the trial court without setting aside the findings rendered by the trial court in favour of the appellants?

iii. Whether the Lower Appellate Court, being the final court of facts, is justified in law in rendering a cursory judgment?

iv. When the deceased 2nd defendant is the real owner of the suit property as evidenced in Ex.B2 sale deed dated 19.05.1944 and subsequent transaction in favour of the 1st respondent is

a sham and nominal one, whether the Lower Appellate Court is correct in law in upholding the sale in favour of the 1st respondent?

3. After hearing the arguments of the counsel appearing for the respective parties and on a perusal of the judgments and decrees of the Courts below, it is found that, though the first appellate court being the final court of facts, has not assessed the merits of the case of the respective parties by adverting to the oral and documentary evidence adduced in the matter, particularly, the oral and documentary evidence adduced by the defendants through D.Ws.1 to 4 as well as the documentary evidence projected as Exs.B1 to B38 and on the other hand found to have accepted the plaintiff's case purely on the basis of Ex.A1 sale transaction without considering the challenge made to the said sale transaction by the defendants, particularly, the challenge of beuami nature of the said transaction thrown by the defendants as well as the claim of the defendants to the property by way of the Will and the other defence projected by the defendants for rejecting the plaintiff's lis, purely by holding that Ex.A1 satisfies the definition of sale as outlined u/s.54 of the Transfer of Property Act, the first appellate court thereby holding that it is not a sham nominal document and on the other hand, the same is a genuine document and accordingly proceeded to set aside the judgment and decree of the trial court and thereby decreed the suit as prayed for with costs.

4. The suit has come to be laid by the plaintiff for the reliefs of declaration and possession. The plaintiff's case has been resisted by the defendants by put forth various pleas contending that the third defendant has no right in the suit property and therefore, the claim of title to the suit property by the plaintiff, by way of purchase of the same from the third defendant is invalid and it is only the defendants 1 and 2, who own and are enjoying the suit property and further the defendants have also set up title in the suit property by way of a Will dated 01.01.1994 and thereby sought for the dismissal of the plaintiffs' action.

5. It is thus found that various defences had been raised by the defendants to reject the plaintiff's claim of title to the suit property as well as the recovery of possession of the same. However, the first appellate court without going into the aspects of the manifold defences projected by the defendants as well as the oral and documentary evidence adduced by the defendants in support of the same, particularly, whether the same are acceptable or reliable and thereby the plaintiffs' lis should fail, on the other hand, by simply holding that Ex.A1 sale transaction fulfills the requirements of the sale and thereby it is not a sham nominal document and on that basis,

upheld the plaintiffs' case.

6.As rightly put forth by the defendants' counsel, when the trial court has given weighty reasons for rejecting the plaintiff's case and when the first appellate court has failed to advert to the same, particularly, without in any manner considering on the materials placed on record, more particularly without deliberating on the oral and documentary evidence adduced by the defendants, it is found that the first appellate court being the final court of facts, has committed a serious error in reversing the judgment and decree of the trial court by ignoring or failing to take into consideration the materials placed by the defendants to resist the plaintiffs' case. It is found that,when the first appellate court is expected to give reasons either for confirming or reversing, more particularly for reversing the findings of facts of the trial court as per section 96, r/w Order 41 Rule 31 of the Code of Civil Procedure, it is found that as far as this case is concerned, the first appellate court proceeded to reverse the judgment and decree of the trial court without any discussions and no reason is spelt out in its judgment for disagreeing with the findings of the trial court, on any one of the aspects of the matter and in such view of the matter, it is found that the judgment and decree of the first appellate court are found to be not in consonance with the principles of law as adumbrated in the decisions reported in 2018 (1) SCC 604 [C.Venkata Swamy Vs. H.N.Shivanua (Dead) by Lrs and another], AIR 1986 Supreme Court 2823 [Smt.Sawarni Vs. Smt.Inder Kaur and others] and 2011 (2) CTC 642 [C.G.Jayaraman and the South Indian Bank Ltd., rep.by its Branch Manager, Mahe. Vs. C.Gangadharan].

7. The counsel for the plaintiff touching upon the merits of the case, placed reliance upon the decisions reported in

1. MANU/SC/0760/2017 [Jaspal Kaur Cheema and others Vs. Industrial Trade Links and Others]
2. 2013(2) CTC 104 [Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P. Ltd & Others]
3. AIR 2004 Kerala 312 [V.Suseelan Vs. T.P.Leela and others]
4. 2004 (1) CTC 488 [U.Bhaskaran Vs. Bank of India, 17 Errabalu Chetty Street, Madras -1 and others]
5. 2004 (7) Supreme Court Cases 233 [Valliammal (D) by LRs Vs. Subramaniam and others]
6. 2013 (2) Supreme Court Cases 606 [Gian Chand and Brothers Vs. Rattan Lala alias Rattan Singh]

The principles of law outlined in the abovesaid decisions are taken into consideration.

8.However considering that the merits of the case of the respective parties had not been dealt with by the first appellate court and instead finding that the first appellate court had proceeded to uphold the plaintiffs' case merely by

accepting Ex.A1 sale transaction without considering the challenge made to the same by the defendants as well as the other defences projected by the defendants particularly, having failed to assess and consider the oral and documentary evidence adduced by the defendants either for accepting or rejecting the same, one way or the other, seem to have given a cursory judgment and decree without any reasonings and in such view of the matter, I am of the considered opinion that the judgment and decree of the appellate court is not in accordance with law and hence, liable to be set aside.

9.However,in the interest of justice, since various contentions had been raised by the respective parties for their claim of title to the suit property and as the same should have been dealt with by the first appellate court at all angles being the final court of facts, by assessing the materials placed on record one way or the other, I deem it fit and necessary to remit the matter back to the first appellate court with a direction to the first appellate court to evaluate and assess the materials on record placed by the respective parties as well as the contentions put forth by the respective parties for claiming title to the suit property after formulating the necessary points for the determination and thereby dispose of the first appeal in accordance with law.

10.In the light of the abovesaid reasonings, the judgment and decree of the first appellate court are set aside and the matter is remitted back to the first appellate court with a direction to the first appellate court to take up the first appeal on file and after providing ample opportunities to the respective parties to place further submissions in the matter, proceed to dispose of the first appeal afresh in accordance with the principles of law as enunciated under section 96 r/w Order 41 Rule 31 of the Code of Civil Procedure and as adumbrated by the decisions of the Apex Court referred to supra by considering the contentions of both the parties on the basis of the materials placed on record, both oral and documentary after formulating the necessary points for determination as provided under law. Accordingly, the second appeal is allowed. No costs. Connected miscellaneous petition, if any, is closed.

s/d-

Assistant Registrar(CS-V)

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Sub-Assistant Registrar

mfa

To

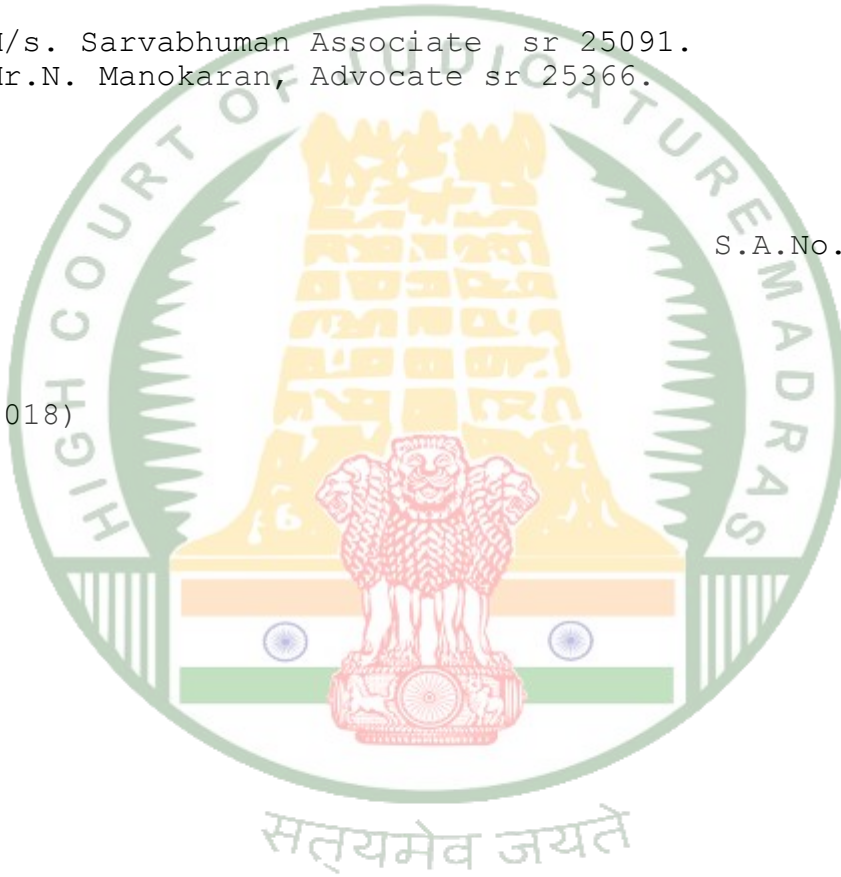
1. The Additional District Judge,
Fast Track Court IV, Erode at Bhavani.
2. The II Additional District Munsif,
II Additional District Munsif Court at Bhavani.
3. The Section Officer,
VR Section,
High Court.(2 copies)

+1 CC to M/s. Sarvabhuman Associate sr 25091.

+1 CC to Mr.N. Manokaran, Advocate sr 25366.

S.A.No.430 of 2004

SR(CO)
SP(20/04/2018)



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