

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice C.SARAVANAN

A.S.No.227 of 2013
and
M.P.No.1 of 2013

1.Marappa Gounder
2.Chellappan
3.Ayyavoo

..Appellants/Defendants 1 to 3

Vs

1.Ammaneeswara Gounder
2.Jayakaran
3.Karunakaran
4.Vimala Kasthuribai
5.Manoharan
6.Chandralekha
7.Bhanumathi
8.Gnanathilagam

..Respondents 1 & 2/Plaintiffs

..3 to 8 Respondents/4 to 9 Defendants

Appeal preferred under Order 41 Rule 1 r/w Section 96
C.P.C. against the judgment and decree dated 28.02.2013 made in
O.S.No.284 of 2010 on the file of the I Additional District
Judge, Erode.

For Appellants .. Mr.N.Manokaran
For Respondents.. Mr.I.Abrar Md. Abdullah
for R1 & R2

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Challenging the judgment and decree dated 28.02.2013 in
O.S.No.284 of 2010 passed by the I Additional District Judge,
Erode, the present appeal has been filed.

2.Appellants are defendants 1 to 3 in the suit. The suit
has been filed by the plaintiffs/respondents 1 and 2 seeking the
relief of specific performance of the agreement dated 23.07.2010
marked as Ex.A2. There was earlier round of litigation between
the parties, which finally ended before this Court in S.A.No.5
of 1996. Thereafter, Ex.A2 came into being between the co-

owners, which is also inclusive of the subsequent purchaser as well. This was done through Ex.A2. As per Ex.A2, parties agreed to have their respective shares after cutting the trees and utilise the proceeds towards expenses for the aforesaid purpose. Two things were to be done viz., registration and survey.

3.The plaintiffs issued legal notices under Exs.A3 and A5, which were duly acknowledged by the appellants under Exs.A4 and A6, which has been replied under Ex.A8. Thereafter, the plaintiffs filed a suit for specific performance. In the suit, the appellants did not deny the execution of Ex.A2 through the written statement. They also acknowledged the fact that the suit property was measured by the surveyor. The written statement reiterates the factum that standing grown up trees will have to be sold in common and the proceeds will have to be used towards expenses.

4.The learned Trial Judge framed the following issues:
(1)Whether the plaintiffs are entitled to relief as claimed in the plaint?
(2)To what relief?

5.Having found that all the parties did not dispute the factum of Ex.A2 and therefore giving effect to the same, the suit was accordingly decreed. In fact, defendants 4 to 9 filed a memo stating that the suit may be decreed as prayed for. The appellants also have made a statement that they are also willing to go as per the written agreement under Ex.A2.

6.The suit decreed is challenged before us by the appellants primarily on the ground that respondents 1 and 2/plaintiffs have cut the trees but not utilised the same as mandated under Ex.A2.

7.The point for consideration is whether the appeal should be allowed or not?

8.The contention of the learned counsel appearing for the appellants that the condition imposed in Ex.A2 is not complied with and therefore, the suit will have to be dismissed cannot be accepted. It is the case of the appellants themselves that the suit can be decreed. Therefore, it is not open to them to contend to the contrary. Execution of Ex.A2 is also not denied by them. The other defendants also filed a memorandum submitted to the decree.

9.P.W.1 has stated in his cross-examination that trees have not been cut. In the proof affidavit filed by the third appellant, it has been stated that trees have been sold in favour of one Palanisamy and the proceeds have been apportioned

among the co-owners. Out of the said amount, a sum of Rs.1,30,000/- has been given in favour of the first respondent/first plaintiff.

10.From the above, it is clear that it is for the appellants to prove that the trees were cut, the proceeds were apportioned and thereafter, the sum of Rs.1,30,000/- has been given in favour of the first respondent/first plaintiff. There was also no specific plea in the written statement to that effect. Now the measurement has already been over through surveyor. However, it is the case of the first respondent/first plaintiff that trees are very much available.

11.In such view of the matter, taking note of the nature of issue before us, we permit the plaintiffs/respondents 1 and 2 to cut the trees, if they are available, for the purpose of complying with Ex.A2. If the trees are already cut, then, it is the responsibility of respondents 1 and 2 to make necessary payment particularly when the role of the surveyor is already over. Needless to state that we are dealing with a case of execution of partition deed among the co-owners. Therefore, there may not be any need for paying heavy stamp duty for the purpose of registration.

12.In such view of the matter, while dismissing the appeal, we make it clear that respondents 1 and 2/plaintiffs are duty bound to execute the decree by making necessary payment. Such payment can also be made by cutting the standing trees. If there is any excess amount, the same will have to be apportioned among the co-owners in tune with the respective shares they are entitled to as per Ex.A2. Accordingly, the following order is passed:

(i)The judgment and decree rendered by the Trial Court stands confirmed.

(ii)Respondents 1 and 2/plaintiffs are permitted to cut the trees, if they are available and utilise a sum of Rs.1,30,000/- for the registration purpose.

(iii)If the proceeds exceed the expenses of Rs.1,30,000/- as stated by the appellants themselves, the same will have to be apportioned among the co-owners in the light of Ex.A2.

(iv)If the trees are already cut, then respondents 1 and 2/plaintiffs are duty bound to make the payment towards the expenses for registration in accordance with Ex.A2.

13.In the result, the appeal suit stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

The I Additional District Judge,
Erode.

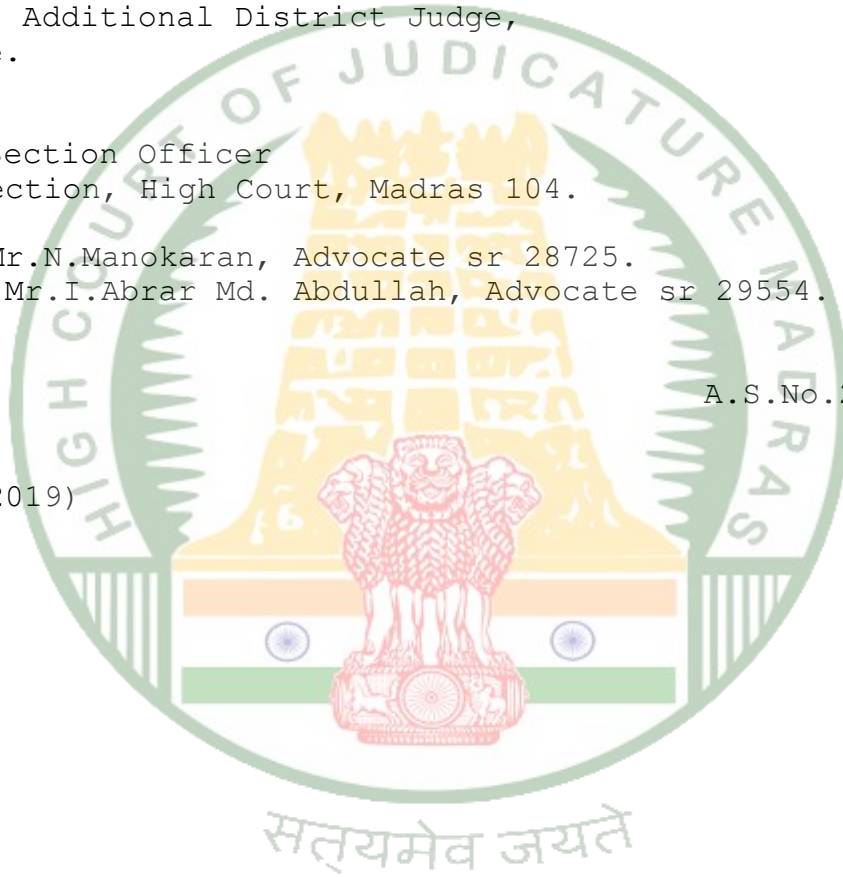
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The Section Officer
VR Section, High Court, Madras 104.

+1 CC to Mr.N.Manokaran, Advocate sr 28725.

+2 Ccs to Mr.I.Abrar Md. Abdullah, Advocate sr 29554.

A.S.No.227 of 2013

RSV(CO)
SP(14/06/2019)



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