

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2019

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

SA.No.1421 of 2003 and
CMP.Nos.16930 & 18750 of 2003

- 1.The District Registrar,
Thiruppur
 - 2.The Government of Tamil Nadu rep.
by its District Collector,
Coimbatore
 - 3.The Sub-Registrar,
Annaimalai,
Pollachi Taluk
- ...Appellants

Vs.

S.P.Dharmaraj Gounder

...Respondent

PRAYER:

The Second Appeal is filed under Section 100 of CPC against the judgment and decree dated 09.08.1995 made in O.S.No.208 of 1993 on the file of District Munsif Court, Pollachi which was confirmed by the judgment and decree dated 30.07.2001 made in A.S.No.11 of 2001 on the file of the Sub Court, Pollachi (AS.No.15 of 1997 Subordinate Judge, Udumalaipettai).

For Appellants : Mr.T.M.Pappiah,
Special Government Pleader

: Respondent - died

ORDER

The second appeal has been filed as against the judgment and decree dated 30.07.2001 passed in A.S.No.11 of 2001 on the file of the Sub Court, Pollachi confirming the judgment and decree passed in in O.S.No.208 of 1993 on the file of District Munsif Court, Pollachi.

2. The case of the plaintiff in brief is that the plaintiff and his son partioned their ancestral property by the partition deed registered as document No.817 of 1990 with the Office of the Sub Registrar, Annaimalai, in which 'A' schedule property admeasuring 19.78 acres was allotted to the plaintiff and 'B'

schedule property was allotted to his son. On the same day, by the document No.618 of 1990, the share of the plaintiff was settled in favour of his son without his knowledge. It came to his knowledge after a period of three months. Thereafter, the plaintiff and his son cancelled the partition deed dated 27.06.1990 on 10.10.1990. Thereafter, on partition after intervening by elders on 01.04.1992 registered the said document, which is pending as P.No.39 of 1991 for the reason of deficit stamp duty. Since it was not registered and some more property were not added in the partition deed, another partition deed was executed by the plaintiff and his son and the same was registered as Doc.No.2642 of 1991 on 09.10.1991 with the Office of the Sub Registrar, Pollachi. As per the partition deed dated 09.10.1991, the plaintiff and his son partitioned the property and are enjoying their respective shares. Therefore, the partition deed dated 01.04.1991 never came into force and that was not acted upon.

2.1.At that juncture, the first defendant demanded to pay stamp duty pending document dated 01.04.1991 as P.No.39 of 1991. Though the plaintiff submitted his explanation for the demand made by the first defendant, it was not cancelled. Hence, the plaintiff filed a suit for declaration and injunction as against the defendants. The defendants resisted the suit and filed written statement that only to escape from the payment of deficit stamp duty, the plaintiff and his son created partition deed dated 01.04.1991 and registered the same with the Office of the Sub Registrar, Pollachi. The partition deed dated 01.04.1991 and the exchange deed between the plaintiff and his son have different nature of document under Sections 5 and 33 of Indian Stamp Act. The petitioner ought to have paid the deficit court fees under Section 40(1) (1) (b) of the said Act for a sum of Rs.80,100/-. Therefore, the defendants prayed for dismissal for dismissal of the suit.

2.2.Before the trial court, the plaintiff examined PW1 and PW2. Exhibits A1 to A9 were marked. On the side of the defendants, DW1 was examined and Exhibit D1 was marked. After consideration of pleadings, evidence and exhibits, the trial court decreed the suit as prayed for, as against which the defendants preferred appeal suit in AS.No.11 of 2001 and the first appellate court dismissed the appeal and confirmed the judgment and decree passed by the trial court. The defendants filed the present second appeal as against the judgment and decree passed by the courts below.

3.This court while admitting the second appeal formulated the substantial questions of law as follows:

a.Whether the courts below were right in entertaining the suit for declaration and for injunction when the jurisdiction of the civil court is impliedly barred by the Registration Act?

b.Whether the courts below were right in not deciding the suit on question of lack of jurisdiction when the Registration Act, Section-80A provides for appeal and resolving the dispute?

c.Whether the court below was right in holding that the appellant's performance of duty under Sec.17(b) of the Registration Act is bad in law?

d.Whether the courts below were right in not considering that the plaintiff has filed the suit to indirectly questioning the lawful order of the authorities instead of availing the remedies available to him under law?

4.The learned Special Government Pleader appearing on behalf of the appellants submitted that the Ex.A5 conveys and creates title to the son of the plaintiff under the guise of partition deed, and the plaintiff has become a life estate holder and creates title to his son. Such creation has rightly been perused under Section 17 of Registration Act. This aspect was not considered and as such it requires interference by this Court. In view of the Section 80(a) of the Registration Act, the appeal has been preferred against the order passed by the first appellate court within a period of two months from the date of order. Therefore, the suit itself is not maintainable.

5.He also filed a memo stating that the sole respondent died on 02.02.2009 itself. Even then, the appellants did not take any steps to implead the legal heirs of the sole defendant / respondent. On that score, the appeal itself is liable to be dismissed as against the respondent. That apart both the courts below declared that the Ex.A5 is the partition deed between the plaintiff and his son. Further Exs.A1 and A2 were cancelled by the registered cancellation deed marked as A3 and A4. Therefore, the courts below rightly held that the impugned demand notice dated 14.10.1991 and 30.12.1991 are declared as null and void and not enforceable one as such this Court finds nothing warranted to interfere with the judgment and decree passed by the courts below.

6.In view of the same, the second appeal is dismissed.
Consequently, connected miscellaneous petitions are closed. No
costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

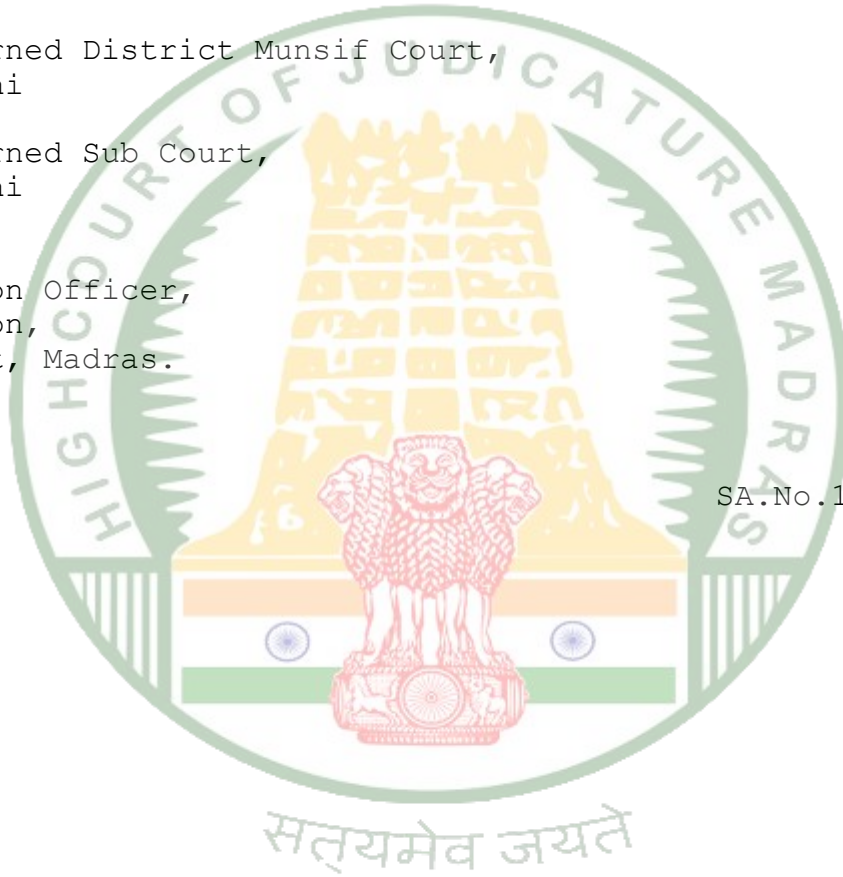
1.The learned District Munsif Court,
Pollachi

2.The learned Sub Court,
Pollachi

Copy to:
The Section Officer,
V.R.Section,
High Court, Madras.

vsnii(co)
krd 25/9

SA.No.1421 of 2003



WEB COPY