

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.480 of 2012

Chockalingam Pillai

... Appellant /Plaintiff

Vs.

1. Renganathan

2. Aanandan

... Respondents/Defendants

PRAYER: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 19.12.2011 in A.S.No.43 of 2011 on the file of the Principal Sub Court, Mayiladuthurai, confirming the judgment and decree dated 17.02.2011 in O.S.No.326 of 2009 on the file of the Additional District Munsif Court, Mayiladuthurai.

For Appellant : Mr.S.Sounthar

For Respondents : Mr.A.Muthukumar

Aggrieved over the concurrent findings of the Courts below, this second appeal has been filed by the plaintiff.

2. For the sake of convenience, the parties are arrayed as per their own ranking before the trial Court.

3. The brief facts of the case are as follows:

The Plaintiff and the first defendant are brothers. In the year 1954 under Ex.A1 there was a family partition, in which "A" schedule property was allotted to the father of the plaintiff and the "B" schedule property was allotted to the first defendant which is the subject matter of the present suit. Thereafter, in the year 1981, another partition deed was effected between the parties. In the said partition, the properties have been allotted to the plaintiff and the first defendant. It is the contention of the plaintiff that the suit

property has been allotted to the first defendant in the year 1981 partition deed and the first defendant ceased to be the owner of suit property, after the partition deed in the year 1981. However, on 14.09.2009, the first defendant has sold the suit property in favour of the second defendant. Hence, the suit was filed to set aside a said sale deed.

4. The first defendant, while admitting the partition deed in the year 1954, stated that the lands of the first defendant in the Puthagaram Village were scattered at different places. The plaintiff, who consolidated the holding of one place by effecting number of exchanges with other land owners. The above exchanges were not done through the registered documents, but, those exchanges were acted upon. It is the contention of the first defendant that over and above the property obtained by exchange belonged one Venkatesan pillai, other properties are also gone to the subject matter of the partition of the year 1981. The suit property was already exchanged with the defendant's father Venkatesan, plaintiff have no right title over the property. Hence the first defendant prayed for dismissal of the suit.

5. In the trial court, on the side of the plaintiff, P.W.1 to P.W.3 were examined and exhibits Ex.A1 to Ex.A5 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and exhibit Ex.B1 was marked.

6. The trial court, after analysing the documents and evidence of the parties, held that the suit property was already exchanged for the second defendant and the plaintiff was not the owner of the property. The first appellate court has confirmed the findings of the trial court, as against which, the present appeal has been filed.

7. In the second appeal, the plaintiff raised the following questions of law :

A] Whether the sale deed executed by the 1st respondent in favour of 2nd respondent is null and void in view of clear admission by 1st respondent as D.W.1 that he had not received any consideration for sale? Whether sale not supported by consideration is valid in the light of Sec.52 of Transfer of Property Act?

B] Whether 1st respondent had any title with him to execute sale deed subsequent to Ex.A.2, partition wherein all the properties in Pattavarthi Vattam were given to the share of appellant?

C] Whether the judgements of courts below are vitiated by its failure to consider the material admissions of D.W.1 and D.W.2 which renders sale deed by D.W.1 in favour of D.W.2 as invalid?

8. The learned counsel appearing for the appellant contended that though under Ex.A1 dated 19.06.1954, the suit property was originally allotted to the first defendant and the property is situated in the Kazhanivasal village to the plaintiff, however, subsequently in the year 1981, under Ex.A-2 dated 31.01.1981 the properties situated in Karnam Village were allotted to the plaintiff and the properties situated in Kalanivasal village was allotted to the first defendant.

9. It is the contention of the learned counsel for the appellant that the left out property in the above village was allotted to the plaintiff when the plaintiff was allotted the properties, in the Karnam village and subsequently, the first defendant ceased to be the owner of the suit property and he had no right whatsoever in the suit property, and the sale in favour of the second defendant by the first defendant is not valid. The case of the defendant cannot be non suited merely on the admission of the plaintiff, in any event, oral exchange is not valid in law and submitted that the courts below did not appreciate the facts properly. Hence, the appeal has to be allowed.

10. The learned counsel appearing for the respondents would contend that admittedly in the year 1984, the suit properties were allotted to the first defendant. Thereafter, the first defendant have exchanged the properties orally with second defendant's forefathers. However, the said exchange was not registered and the exchanges have been accepted and acted upon and infact admitted by the plaintiff in even in the evidence. The exchanges were acted upon in Ex.A-2, there was a reference with regard to the exchanges made between the parties. Only for the above reasons the suit property was not allotted under Ex.A-2 in favour of the plaintiff. Hence it is submitted that the trial court as well as the appellate court considered the entire materials and rightly held that the plaintiff has no right or title over the property as there is no substantial question of law. Hence, he prays for dismissal of the appeal.

11. With regard to the suit property, it is the contention of the plaintiff that the suit property absolutely belongs to him as Ex.A-2 the registered partition deed dated 31.01.1981. Whereas the first defendant taking advantage of the some earlier arrangements, has sold the same to the second defendant without

any title. On perusal of the Ex.A1, the partition deed dated 19.06.1954 the suit property was originally allotted to the first defendant and the property situated in Kalanivasal village, was allotted to the plaintiff. It is under Ex.A1 the suit property was specifically allotted to the first defendant. In Ex.A-2 there is no specific reference with regard to the suit survey field in favour of the plaintiff. What has been allotted under Ex.A-2 to the plaintiff is the properties exchanged between one Venkatesan pillai and others and between venkatesan and the defendants. Only exchanges properties have been divided between the plaintiff and the first defendant. In Ex.A-2, there is a specific reference as to be previous exchange between the two families. There are recitals in Ex.A-2, which clearly established the fact that there was some exchanges took up between the two families and the exchanges has not been registered.

12. The suit property has not been specifically allotted in A2 in favour of the plaintiff, non allotment of the suit property to plaintiff may be due to the fact that there was some arrangement between the two families in exchanging the properties. That is why only the residual clause was inserted in Ex.A-2 and it is specifically mentioned in Ex.A-2, to the effect that the properties left out in the two villages specifically allotted to the plaintiff and defendants. The manner, in which the Ex.A-2 was written clearly indicate that the suit property has been consciously excluded from allotting to the plaintiff. In fact, the above fact clearly indicate the Factum that the suit property which is already allotted to the first defendant. That it why consciously it was not allotted to plaintiff in Ex.A-2. These facts have been clearly taken note by the trial court. The plaintiff has also in categorical terms admitted the oral exchange. Though oral exchange cannot be given any importance but the fact remains that under Ex.A-2 partition deed suit property has not been allotted to plaintiff. Whereas it was allotted to first defendant under Ex.A-1.

13. Hence, this court is of the view that since the suit property has not been specifically allotted to plaintiff in Ex.A-2. The plaintiff cannot claim any title under Ex.A-2, when Ex.A-2 deals with the other properties and also left out properties in the two villages. Unless the suit property has been specifically allotted under Ex.A-2, the plaintiff cannot claim any title over the suit property and consequently, cannot assail the sale made by the first defendant. Hence, the substantial question of law raised by the plaintiff are answered against the appellant in negative.

14. In view of the above, the second appeal in S.A.480 of 2012 is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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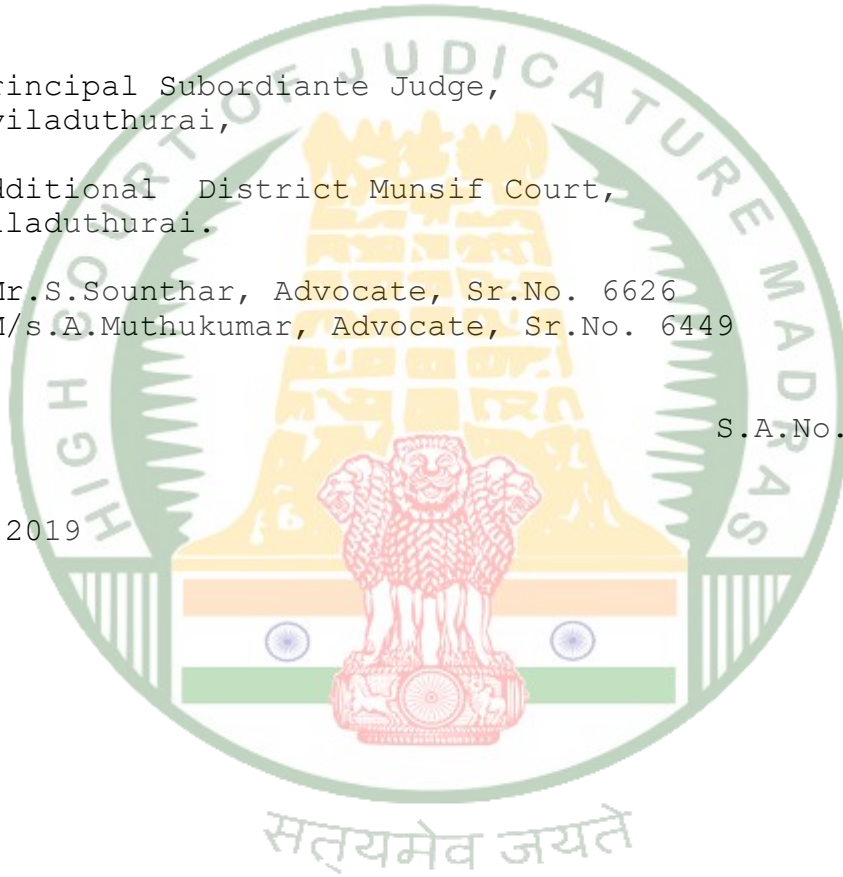
1. The Principal Subordinate Judge,
Mayiladuthurai,
2. The Additional District Munsif Court,
Mayiladuthurai.

+1 cc to Mr.S.Sounthar, Advocate, Sr.No. 6626

+1 cc to M/s.A.Muthukumar, Advocate, Sr.No. 6449

S.A.No.480 of 2012

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CSL/10.05.2019



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