

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1214 of 2019 &
C.M.P.Nos.26470 & 26475 of 2019

Sithayeeammal

.. Appellant/1st Defendant

Versus

1.Kasipillai

... 1st Respondent/ Plaintiff

2.Jeevarathinam

3.Thangavel

4.Rathinam

5.Murugesan

.. 2 to 5 Respondents/2 to 5 Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.03.2019 made in A.S.No.20 of 2016 on the file of Principal District Judge, Salem, confirming the judgment and decree of O.S.No.136 of 2013, dated 17.03.2015 on the file of II Additional Subordinate Court, Salem.

For Appellant : For Ms.P.Veena Suresh

JUDGMENT

The first defendant in O.S.No.136 of 2013 is the appellant herein. The first respondent instituted the suit against the appellant and the respondents 2 to 5, praying for declaration, declaring the settlement deed, dated 10.10.1995 executed by the first defendant in respect of 'B' schedule property is valid and to declare the title of the plaintiff's property to 'C' schedule property and for declaring the cancellation of settlement deed is void and also prayed for consequential permanent injunction in respect of 'C' schedule property.

2. It is the case of the plaintiff that her mother, the first defendant became absolute owner of 'A' schedule property, measuring an extent of 88 cents in Survey No.6/3 part of Sivathapuram Village in Salem Taluk, by way of sale deed, dated 07.06.1973. On 10.10.1995, the first defendant settled 20 cents of land, out of 88 cents in favour of her four daughters, which is described as 'B' schedule property.

3. The plaintiff would claim that in pursuance of the settlement deed, dated 10.10.1995, possession was handed over to them and the property was divided between the four daughter, by way of partition deed, dated 15.09.2000. The plaintiff was allotted 'C' schedule property. It is further stated that one of the daughters of the first defendant viz., Chinnaponnu died on 24.12.2000, leaving behind her three sons and two daughters and thereafter, her two daughters released their right in favour of their brother Rathinam, by a registered release deed dated 28.08.2008. It is further contended that the first defendant fell out with her daughters and grandsons and at the instigation of one of her sons, unilaterally cancelled the registered settlement deed, by way of cancellation deed, dated 04.06.2006. According to the plaintiff, the first defendant had no right to make such cancellation and hence, the cancellation deed is not valid and void.

4. The suit was contested by the first defendant, stating that the settlement deed, dated 10.10.1995 was obtained by misrepresentation and it was not acted upon.

5. Before the trial Court, the plaintiff examined two witnesses and marked Exs.A1 to A34. On the side of the defendants, two witnesses were examined as D.Ws' 1 and 2 and Exs.B1 to B13 were marked.

6. Upon consideration of the oral and documentary evidence, the trial Court decreed the suit. The appeal preferred by the first defendant was dismissed. Hence, this appeal.

7. Mr.T.R.Rajaram, learned counsel, representing Ms.P.Veena Suresh, learned counsel for the appellant would contend that both the Courts below have failed to consider the oral and documentary evidence produced by the appellant in a proper perspective manner. According to the learned counsel, the settlement deed Ex.A2 was not acted upon and mere issuance of joint patta in the name of the plaintiff and his sisters would not confer valid title to the suit property. It is also argued that the plaintiff as well as the defendants 3 to 5 have not specifically pleaded that the original settlement deed was not handed over to them and the plaintiff has no locus standi to file a suit for declaration of title for the entire extent of 20 cents.

8. Heard the learned counsel for the appellant and perused the materials available on record.

9. In the instant case, it is not disputed that under Ex.A1, the first defendant purchased land to an extent of 88 cents on 07.06.1973. It is also not equally disputed that the

first defendant by a registered settlement deed, dated 10.10.1995, settled 20 cents of land in favour of her four daughters and under Ex.A5, the settlement deed Ex.A2, dated 10.10.1995 was cancelled by a deed of cancellation.

10. It is the case of the appellant that Ex.A2-settlement deed was obtained by fraud and it was not acted upon. It is pertinent to note that under Ex.A3, the daughters of the first defendant had partitioned the property by a registered partition, in which, the first defendant was one of the attesting witnesses. P.W.2 has spoken about her presence in his evidence. It is also relevant to note that the deed of cancellation dated 15.09.2000 was challenged by her sons in O.S.No.1008 of 2008, O.S.122 of 2010 and O.S.No.116 of 2011. The appellant herein, the first defendant contested the suit and on technical ground, the suit in O.S.No.1008 of 2008 was dismissed. The first defendant disposed her part of the properties by a sale deed, dated 05.01.2010 and she executed a Power of Attorney in favour of one Jawahar under Ex.A6. The trial Court, taking note of the above aspects, rejected that the case of the first defendant that Ex.A2-settlement deed, dated 10.10.1995 was obtained by misappropriation.

11. From the perusal of the documents, it is evident that the settlement deed Ex.A2 dated 10.10.1995 was acted upon and the same property was partitioned between the daughters of the first appellant by a registered partition deed, dated 15.09.2000 under Ex.A3. On the basis of Exs.A2 and A3, mutation in the revenue records had taken place and they were also included as joint pattadhars. It is also seen that one of the daughters of the appellant, viz., Chinnaponnu died on 24.12.2000 and a release deed was executed by her legal-heirs in favour of their brother, viz., Rathinam. After analyzing both the oral and documentary evidence, the Courts below have granted relief in favour of the plaintiff.

12. In my considered opinion that the factual findings based on evidence, do not warrant interference in this Appeal. In that view, this Appeal is dismissed as devoid of merits. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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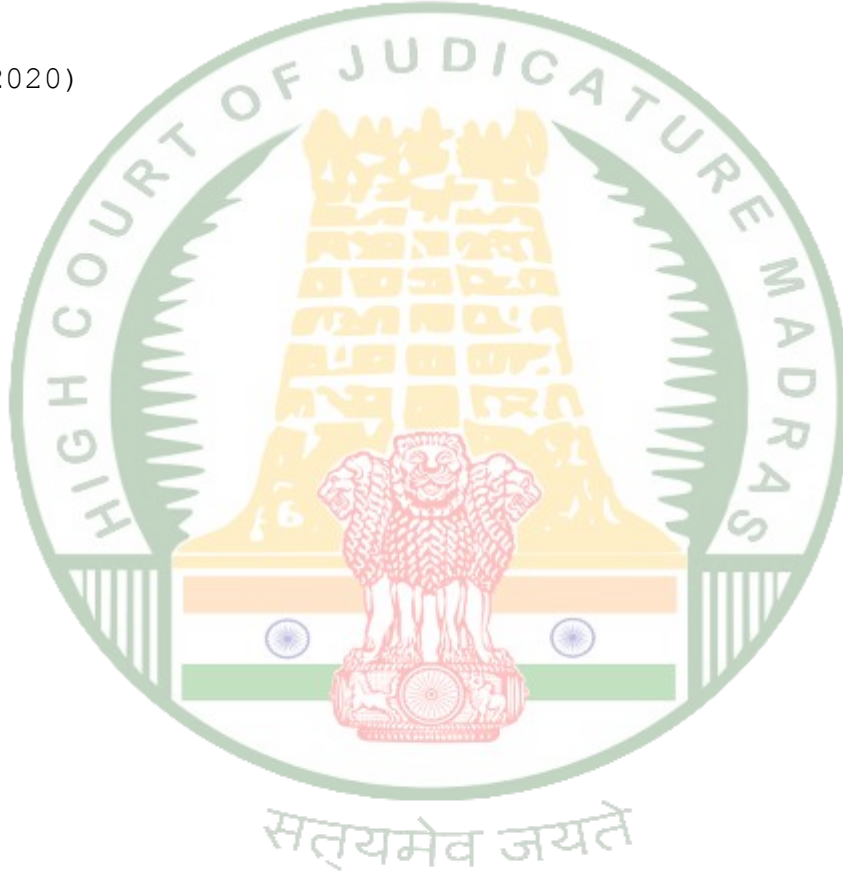
To

1. The Principal District Judge,
Salem.
2. The II Additional Subordinate Court,
Salem.

+1cc to Mr.P.Veena Suresh, Advocate, S.R.No. 104409

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CP (CO)
GN(15/12/2020)



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