

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 295 of 2014 &

CMP.No.12540 of 2016

Vidhya

..Appellant/Appellant/
2nd Respondent

Vs.

1.Saraswathi

2.P.Saravanakumar

..plaintiffs

3.Chitra

4.P.Santhi

..1st Respondent in OS

5.P.K.Rangaya @ Agri

..3rd Respondent in OS

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 06.08.2013 made in A.S.No. 31 of 2013 on the file of the Principal District Judge, Erode as conformed the judgment dated 29.09.2010 made in O.S.No. 35 of 2009 on the file of the Sub-Ordinate Judge at Bhavani.

For Appellant : Mr.S.Udayakumar

For Respondents : Mr. Titus Enock
for Mr.J.C.Vasudevan

J U D G M E N T

The second defendant in O.S.No.35 of 2009 having suffered a decree for partition and separate possession of the plaintiffs 3/4th share in the suit 'A' and 'B' schedule properties at the hands of the Courts below has come up with this second appeal.

2. The case of the plaintiffs is that the suit properties belonged to one Palanisamy. According to the plaintiffs, the said Palanisamy had married the first plaintiff and out of the said wedlock the plaintiffs 2 and 3 were born. It is further claimed that Palanisamy developed intimacy with the first defendant and out of the said relationship the second defendant was born to Palanisamy and the first defendant. The second defendant is said to be the illegitimate daughter of Palanisamy. It is claimed that the suit properties belonged to Palanisamy by virtue of sale deeds of the year 1983 and 1985. According to the plaintiff, Palanisamy died on 16.10.2008 and upon his death,

the suit properties devolved on the plaintiffs 1 to 3 and thus the plaintiffs claimed 1/3rd share in the suit properties.

3. The first defendant remained ex-parte through out. The second defendant filed a written statement contending that the deceased Palanisamy had left a Will bequeathing the suit properties in her favour on 12.03.2001. It was further claimed that Palanisamy had executed Power of Attorney in favour of the 3rd defendant on 14.05.2008. The third defendant as a power agent of the deceased Palanisamy had entered into an agreement of sale with his wife Malarvizhi on 15.10.2008. Therefore, the 3rd defendant sold the property to Malarvizhi under sale deed dated 15.10.2008 which was registered on 16.10.2008 namely, the date of death of Palanisamy. It is the further claim of the second defendant that she purchased the property from Malarvizhi on 15.12.2008 and thus, according to the 2nd defendant, she is the absolute owner of the property.

4. At trial, the second plaintiff was examined as P.W.1 and one Moorthy, 3rd party was examined as P.W.2. Exs.A1 to A8 were marked. The defendants did not chose to let in either oral or documentary evidence. On a consideration of the evidence on record, the Trial Court concluded that the sale deed dated 15.10.2008 said to have been registered on 16.10.2008 cannot confer any valid title on the second defendant. The Trial Court accepted the evidence of P.W.1 and P.W.2 to the effect that after knowing about the death of Palanisamy on 16.10.2008 and after having attended the funeral, the 3rd defendant has hurriedly got a sale deed executed in favour of his wife and has got it registered after the death of Palanisamy. The claim of the 3rd defendant that the sale deed was executed on 15.10.2008 and was registered on 16.10.2008 was disbelieved by the Trial Court. On the above conclusion, the Trial Court held that the second defendant would not get an absolute right over the property as per the sale deed dated 15.10.2008 in her favour. It should be pointed out that neither sale deed dated 15.10.2008 nor the Will said to have been executed by Palanisamy on 12.03.2001 were produced as exhibits in the proceedings. On the above conclusion, the learned Trial Judge granted a decree for 1/4th share each of the plaintiffs since he found that the first defendant had married Palanisamy and the second defendant, daughter of Palanisamy born out of the said marriage. Though it was a second marriage, which is not valid in law, the Trial Court conferred the benefit of section 16(3) of the Hindu Marriage Act on the second defendant and granted her 1/4 share. Aggrieved, the second defendant preferred an appeal.

5. The lower Appellate Court concurred with the findings of the Trial Court. The lower Appellate Court also found that only 3rd defendant had cross-examined P.W.1 and P.W.2. Even in the cross-examination, nothing was suggested to either P.W.1 or P.W.2 to the effect that the sale deed was executed even on 15.10.2008 and it came to be registered on 16.10.2008. The lower Appellate Court, while considering the said issue had categorically observed that the specific evidence of P.W.1 to the effect that Power Agent after knowing the death of her father has executed the sale deed in favour of his wife in a hurried manner on 16.10.2008 has not been discredited in cross-examination of P.W.1 by the Power Agent. In view of the above categorical findings, the Appellate Judge confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved, the second defendant has come up with this second appeal.

6. Notice of motion was ordered on 12.03.2014. Heard, Mr.S.Udhaya Kumar, learned counsel appearing for the appellant. Mr. Titus Enock for Mr. I.C.Vasudevan, learned counsel appearing for the respondents.

7. Mr.S.Udhayakumar, learned counsel appearing for the appellant would vehemently contend that once it is shown that the 3rd defendant namely, Power Agent had entered into an agreement with his wife on 15.05.2008. Pursuant to the said agreement, he has executed the sale deed dated on 15.10.2008, which is before the death of Palanisamy. The Courts below were not right in disbelieving the claim that the sale deed was executed on 15.10.2008. An application has also been taken out seeking permission to produce the agreement said to have been entered into between the 3rd defendant as power agent of Palanisamy and Malarvizhi, wife of the 3rd defendant / vendor of the plaintiff. It is a settled position of law that the agreement of sale does confer title. If the agreement vendor dies or cancels the power of attorney after the agreement before the execution of sale deed, the remedy of the agreement Vendee is to get the sale deed executed by the legal representative or to sue the legal representatives for specific performance. If they do not come forward to execute the sale deed mainly, the power agent entered an agreement of sale with the 3rd party and the same will not confer right on him to execute the sale deed after the death of Palanisamy. It is also a settled position of law, the power ceases on the death of the principal. The Power of Attorney said to have been executed by Palanisamy in favour

of the 3rd defendant has also not been produced. It is not the case of the defendant that the second defendant or the power of attorney, the 3rd defendant, that the power of attorney was coupled with interest. Therefore, on the death of Palanisamy, the power ceased and the 3rd defendant had no power to execute a sale deed.

8. Coming to the claim of the second defendant that the sale deed was executed on 15.10.2008 and it was registered on 16.10.2008. The Courts below have based on the evidence of P.W.1 and P.W.2 have come to conclusion that the sale deed executed only on 16.10.2008 but it was antedated, in view of the death of Palanisamy on 16.10.2008. The Courts below have also accepted the evidence of P.W.1 and P.W.2 to the effect that Palanisamy had died early morning and the 3rd defendant attended the funeral. I find that the said conclusions of the Courts below are based on unimpeachable evidence on record. The Courts below have also pointed out that neither the second defendant nor the 3rd defendant have chosen to examine themselves and from producing the documents namely, the Power of Attorney or the agreement of sale said to have been entered into between the Power of Attorney and the Vendor of the second defendant namely, Malarvizhi.

9. Taking note of the above evidence on record, I find that the conclusions of the Courts below are based on valid and unimpeachable evidence and the same cannot be termed as perverse to enable me to interfere with the said conclusions in the second appeal. The Appellants have come up with C.M.P.No. 12540 of 2016 seeking permission to produce the agreement dated 15.05.2008. The production of the agreement does not alter the status of the parties. As of fact, the Courts below have found that the sale deed was executed after the death of Palanisamy. Even assuming that the agreement to be true, the sale deed having been found to excluded after the death of Palanisamy would become invalid. Therefore, the claim of the second defendant that she has purchased the property under a sale deed dated 15.10.2008 registered on 16.10.2008 has been rightly rejected by the Courts below. In view of the above, I find that the agreement dated 15.05.2008 will not aid this Court in pronouncing judgment in this second appeal. Therefore, C.M.P.No.12540 of 2016 is rejected and I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal. Hence, this appeal fails and accordingly dismissed without being admitted. Consequently,

connected miscellaneous petitioners are closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

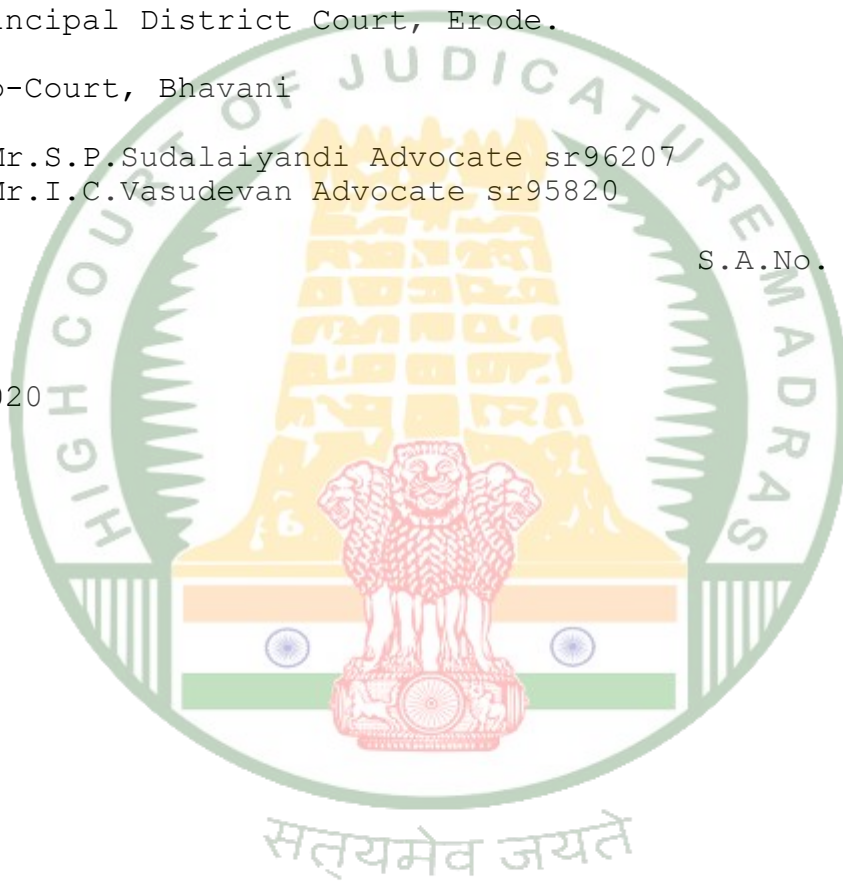
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To:-

1. The Principal District Court, Erode.
2. The Sub-Court, Bhavani

+1 cc to Mr.S.P.Sudalaiyandi Advocate sr96207
+1 cc to Mr.I.C.Vasudevan Advocate sr95820

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