

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
S.A.No. 853 of 2019

1.Minor. Manimaran

2.Minor. Sathishkumar ..Appellants/Appellants/
Plaintiff
(rep by Guardian Mother
Sathiya)

Vs.

1.Perumal

2.Sundararajan ..Respondents/Respondent/
Defendant

Prayer: Memorandum of Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 22.10.2018 in A.S.No. 140 of 2017 on the file of Subordinate Court, Ulundurpet confirming the judgment and decree dated 22.08.2016 in O.S.No. 239 of 2013 on the file of the Principal District Munsif Court, Ulundurpet.

For Appellant : Mr. R.Siddarth

For Respondents : No Appearance

J U D G M E N T

The plaintiffs in O.S.No. 239 of 2013 are the appellants. The said suit was filed by the plaintiffs seeking declaration of the title to the suit properties, for recovery of possession and for mense profits.

2. According to the plaintiffs, the suit properties were purchased in the name of Elumalai and Sakthivel, sons of Semmalai Padayatchi on 06.05.1987, 29.06.1989, 20.06.1989 and on 26.03.1992. These properties were in possession of the father of Elumalai and Sakthivel namely, Semmalai Padayatchi till they attained majority. After the minors namely, Elumalai and Sakthivel attained majority, there was an oral partition between them in the year 2002 and the suit properties were allotted

towards the share of the Elumalai. The said Elumalai executed a registered settlement deed on 28.08.2012 in respect of the suit properties in favour of the plaintiffs, who are his sons.

3. According to the plaintiffs, the defendants had trespassed into the property, claiming no sale deed have been executed by Semmalai Padayatchi in their favour in the year 2006. Hence, the plaintiffs have come forward with the above suit seeking declaration of the title and recovery of possession.

4. The suit was resisted by the defendants contending that the suit properties though were purchased in the name of Elumalai and Sakthivel and various sale deeds were claimed in the plaint, the two brothers namely, Elumalai and Sakthivel after attaining majority had executed a settlement deed on 05.11.1999 in favour of their father Semmalai Padayatchi and he had thus become the owner of the entire properties. It is also stated that one of the sons namely, Sakthivel disputed the settlement and hence to avoid any dispute later, Semmalai Padayatchi took the sale deed from Sakthivel in respect of his $\frac{1}{2}$ share in 08.09.2005. Therefore, according to the defendants, Semmalai Padayatchi is the absolute owner of entire properties in view the settlement executed on 05.11.1999 and the sale deed dated 08.09.2005. Exercising the right over the property obtained by him under the above documents, Semmalai Padayatchi had sold the property in favour of the first defendant on 05.09.2006 and had also put the first defendant in possession. It is also claimed that the settlement deed executed by Elumalai on 28.08.2012 is not valid, since the settlor himself did not have any right over the properties.

5. The Courts below on a consideration of the evidence on record had concluded that father of the plaintiffs namely, Elumalai had no right to execute the settlement deed dated 28.08.2012, since he had parted with the property even in the year 1999 under the settlement deed dated 05.11.1999. On the above conclusion, the Courts below dismissed the suit. Aggrieved, the plaintiffs are on appeal.

6. I have heard Mr.R.Siddharth, learned counsel appearing for the appellants. Mr. R.Siddharth, learned counsel appearing for the appellant would vehemently contend that the settlement deed dated 05.11.1999 was not acted upon and that is the reason why Semmalai Padayatchi had obtained the sale deed from his son, Sakthivel, on 08.09.2005. Therefore, according to him, the title in respect of $\frac{1}{2}$ share of the property vested in their

father Elumalai, who had executed the settlement deed dated 28.08.2012.

7. I have considered the submission of the learned counsel appearing for the appellants. The plaint is silent about the execution of the settlement deed dated 05.11.1999 and the sale deed dated 08.09.2005. I find that the plaintiffs have pleaded an oral partition between Elumalai and Sakthivel in the year 2002. After the written statement was filed setting out the facts relating execution of the settlement deed and the sale deed, the plaintiffs have now taken a new plea that the settlement deed was not acted upon.

8. The said claim that the settlement deed was not acted upon has not been proved by the plaintiffs by letting in satisfactory evidence. It is seen that the revenue records that had been produced stood in the name of the Semmalai Padayatchi and they have been transferred in the name of the first defendant after the purchase of the property by the first defendant. Hence, the claim of the plaintiffs that the settlement deed dated 05.11.1999 was not acted upon has been disbelieved by the Courts below. I do not see any ground or strong reason to interfere with the said factual findings of the Courts below, particularly, considering the scope of a second appeal under Section 100 of C.P.C. I do not find any question of law much less substantial question of law in order to enable this Court to entertain this appeal. Hence, this second appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS VIII)

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Sub Asst. Registrar

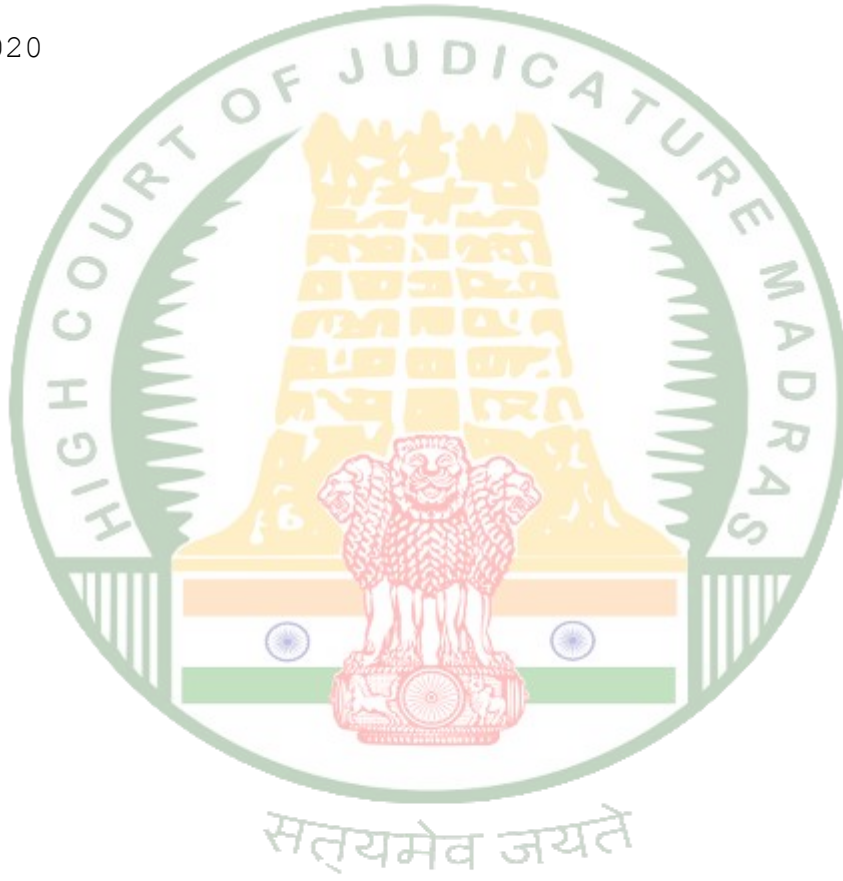
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To

1. The Subordinate Judge
Subordinate Court

2.The Principal District Munsif
Principal District Munsif court
Ulundurpet

S.A.No. 853 of 2019

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