



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Twelfth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr.Justice N.SATHISH KUMAR

CMP(MD) No.1523 of 2020
IN
AS(MD) No.114 of 2016

A.VENKATASUBRAMANIAN

... PETITIONER/APPELLANT

Vs

1 L.KARTHIKEYAN
2 K.MALATHI

... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to receive the certified copy of settlement deed dated 10.3.2003 (Document No.937 of 2003 registered before sub-registrar Thanjavur) and mark the same as additional evidence on the side of appellant as Ex.B3

PRAYER IN AS(MD) No.114 of 2016:

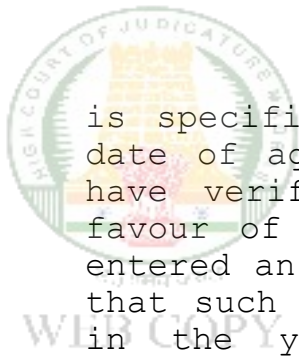
Pleased to set aside the judgment and decree dated 02.03.2016 made in O.S.No.22 of 2013 on the file of II Additional District and Sessions Court, Thanjavur and dismiss the suit with cost by allowing the appeal and thus render justice.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.D.ARUMUGAM, Advocate for M/S.R.GANDHI, Advocate for the petitioner and of Mr.M.S.BALASUBRAMANIA IYER, Advocate on behalf of the Respondents, the court made the following order:-

The main appeal is filed as against the decree and judgment of the trial Court, decreeing the suit for specific performance. In the appeal stage, an application has been filed for reception of additional documents.

2.Heard the learned Counsel on either side.

3.The main defence in the appeal is that the agreement though registered was obtained taking advantage of the disability of the defendant in a different transaction and not intended for sale. Learned counsel for the petitioner states that even in the plaint it



is specifically pleaded by the plaintiffs that even prior to the date of agreement ie., 21.12.2012, the first plaintiff appears to have verified the encumbrance and found the settlement deed in favour of the defendant. Having satisfied with the title, he has entered an agreement. Hence, it is the contention of the petitioner that such contention itself is false. Settlement was entered only in the year 2003. Therefore, possibility of verifying the encumbrance on the date of agreement is highly improbable. Hence, he prays for allowing of additional documents to show that settlement was registered only in the year 2003. Further, the defendant did not have title to the property.

4.Whereas, it is the contention of the respondents that the defendant has admitted the settlement deed in the trial Court and now, they cannot take a different stand in the appeal. Further, the original settlement deed has not been produced before the trial Court or appellate Court. Further, no layman will advance such a huge amount on the same day. Hence, this document is necessary to show that the agreement is not for sale. Whereas, the learned Counsel for the respondents would submit that there is no explanation for original and there is no reason as to why this document has not been produced before the Trial Court.

5.No doubt, additional documents cannot be received as a matter of right, unless the petitioner explains the Court, whether the document was not in possession of the plaintiff or the trial Court has rejected such document. Though, the duty is cast on the plaintiffs to prove the above, the Court finds that this document is also relevant to decide the issue and enable the Court to arrive at this conclusion. The court can very well permit the parties to adduce evidences. Since, the settlement deed is relevant to decide the validity of the agreement, the enforcement of the contract, Counter affidavit has also been filed.

6.Both side has no objection to receive the document and submitted that the document may be marked with consent. The petitioner submitted that no oral evidence is required and the respondents also submitted the same. In view of the same, this petition is allowed and the document is marked as Ex.B.3.

7.Registry is directed to list the matter for hearing on **20.02.2020**, finally for arguments.

sd/-
12/02/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THANJAVUR.

WEB COPY

ORDER

IN

CMP (MD) No.1523 of 2020

IN

AS (MD) No.114 of 2016

Date :12/02/2020

MR

TK/VR/SAR.1/19.02.2020/3P/2C