

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No. 2618 of 2019 &
CMP.No.12700 of 2019

1. V. Lakshmi
2. K. Shakila
3. L. Sumathi

... Appellants

Vs.

1. Baby Ammal
2. R. Sasidevi
3. U. Devaki

... Respondents

Civil Miscellaneous Appeal filed under Order 41 Rule 1 of Civil Procedure Code 1908 against the Judgment and decretal order dated 30.10.2018 made in A.S. No.227 of 2012 on the file of the Vth Addl City Civil Court at Chennai reserving the Judgment and decretal order dated 07.09.2011 made in O.S. No.3067 of 2009 on the file of the I Assistant City Civil Court at Chennai

For Appellants : Mr. S. Rajesh

For Respondents : Mr. M.S. Palaniswamy
for R1
Mr. K.V. Sundararajan
for R2 & R3.

JUDGMENT

This appeal has been filed challenging the common judgment and decree dated 30.10.2018 passed by the V Additional City Civil Court, Chennai in A.S. Nos.115 of 2012 and 227 of 2012, wherein, the learned V Additional Judge, City Civil Court, Chennai has remanded the matters to the Trial Court for fresh consideration by giving the following reasons

:

a) the first respondent (first defendant) has executed two unconditional settlement deeds in favour of her two sons on 23.12.2002. Under the said settlement deeds, the first respondent has not reserved any right of revocation of the settlement deeds while executing the same.

b) when the settlement deed is executed unconditionally in favour of any person without reserving any right of revocation, the said settlement deed cannot be revoked by the settlor at her own will. The only option left to the settlor is to approach the Court for declaration, if any fraud has been played on her to execute the settlement deed. The first respondent / first defendant has settled the property in favour of her two sons vide two registered settlement deeds which were subsequently cancelled by the first respondent / first defendant on 16.04.2003 by unilateral cancellation deeds and settled the properties in favour of her three daughters and also executed a Will in favour of her two sons. Subsequently, the first respondent / first

defendant cancelled the settlement deeds executed in favour of her daughters on 05.12.2008 and thereafter executed two sale deeds in favour of the respondents 2 and 3 / defendants 2 and 3, who are the daughter-in-laws of the first respondent / first defendant. The said sale deeds executed by the first respondent / first defendant in favour of her daughter-in-laws viz., 2nd and 3rd respondents / 2nd and 3rd defendants is the subject matter of the suit O.S. No.3067 of 2009, wherein, the appellants / plaintiffs have sought for declaration that the said sale deeds are null and void and have also sought for an injunction. After executing the unregistered settlement deeds in favour of her sons on 23.12.2002, without reserving the right of revocation, the first respondent / first defendant has no right or title to deal with the property.

c) When the validity of unilateral cancellation deeds executed by the first respondent / first defendant cancelling the settlement deeds in favour of her sons itself is in question, the first respondent / first defendant is not entitled to create subsequent documents based on an unilateral cancellation deeds without any authority.

d) The Trial Court failed to frame any issues with reference to the right of the first respondent / first defendant to cancel the settlement deed executed by her in favour of her sons on 23.12.2002.

e) The Trial Court has not framed the issues regarding non joinder of necessary parties viz., the two sons Ravikumar and Senthilkumar in the suit. The suit cannot be decided without deciding these additional issues.

2. Heard Mr.S.Rajesh, learned counsel for the appellants and Mr.M.S.Palaniswamy, learned counsel for the 1st respondent and Mr.K.V.Sundararajan, learned counsel for the 2nd and 3rd respondents.

3. This Court does not find any infirmity in the above findings of the Lower Appellate Court in A.S. Nos.115 and 227 of 2012 as it is based on the evidence available on record. This appeal was filed in the year 2019 and two years have elapsed since then. No useful purpose will be served if this appeal is adjudicated on merits at this stage. Therefore, this Court is of the considered view that in the interest of both the parties to the dispute, who are admittedly family members, a direction can be issued to the Trial Court to dispose of the suit within a time frame to be fixed by this Court.

4. The Additional issues have already been framed by the Lower Appellate Court under the impugned judgment and decree which are as follows :

1) Whether the unconditional settlement deeds dated

23.12.2002 (Ex.A1 & Ex.A2) can be revoked unilaterally by the settlor when right of revocation is not reserved by her?

2) Whether the suit is bad for non-joinder of necessary parties namely Ravikumar and Senthilkumar who are the original settlees?

5. The Lower Appellate Court under the impugned judgment and decree has also permitted both the parties to lead evidence afresh and has also given a direction to the Trial Court to dispose of the suit as expeditiously as possible.

6. For the foregoing reasons and in the interest of both the parties to the dispute, this Court directs the Trial Court viz., the learned I Assistant Judge, I Assistant City Civil Court, Chennai to dispose of the suit O.S.No.3067 of 2009 after giving sufficient opportunity to both the parties as directed by the Lower Appellate Court in its common judgment and decree dated 30.10.2018 passed in A.S. Nos.115 and 227 of 2012, within a period of six months from the date of receipt of a copy of this judgment.

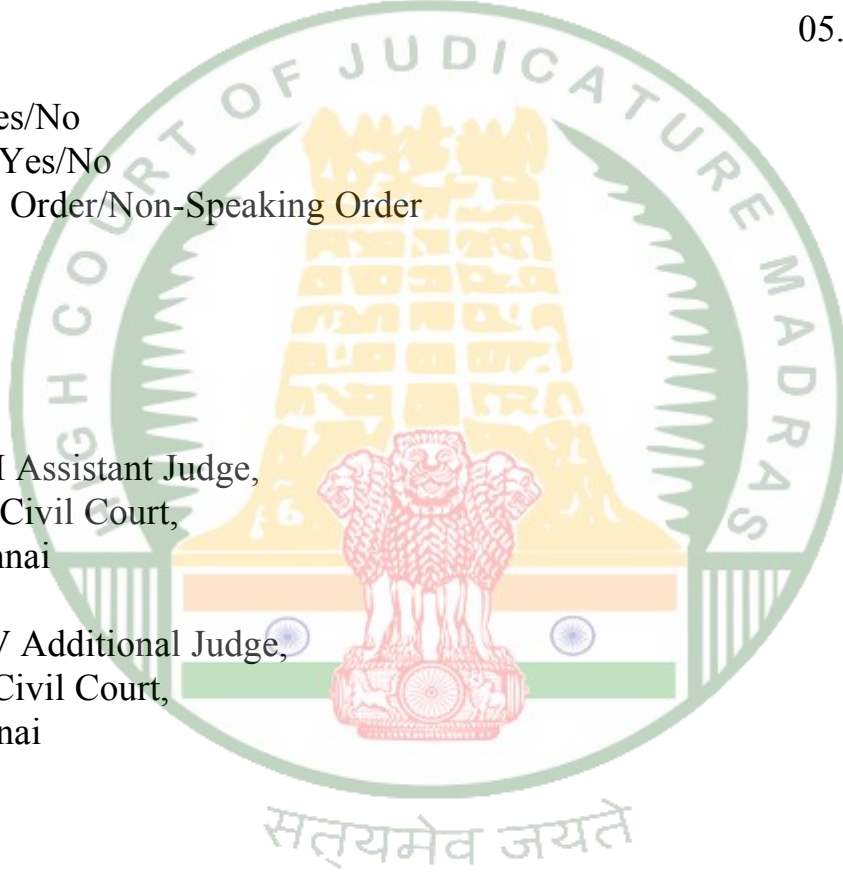
7. With the aforesaid directions, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

05.10.2021

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To

1. The I Assistant Judge,
City Civil Court,
Chennai
2. The V Additional Judge,
City Civil Court,
Chennai

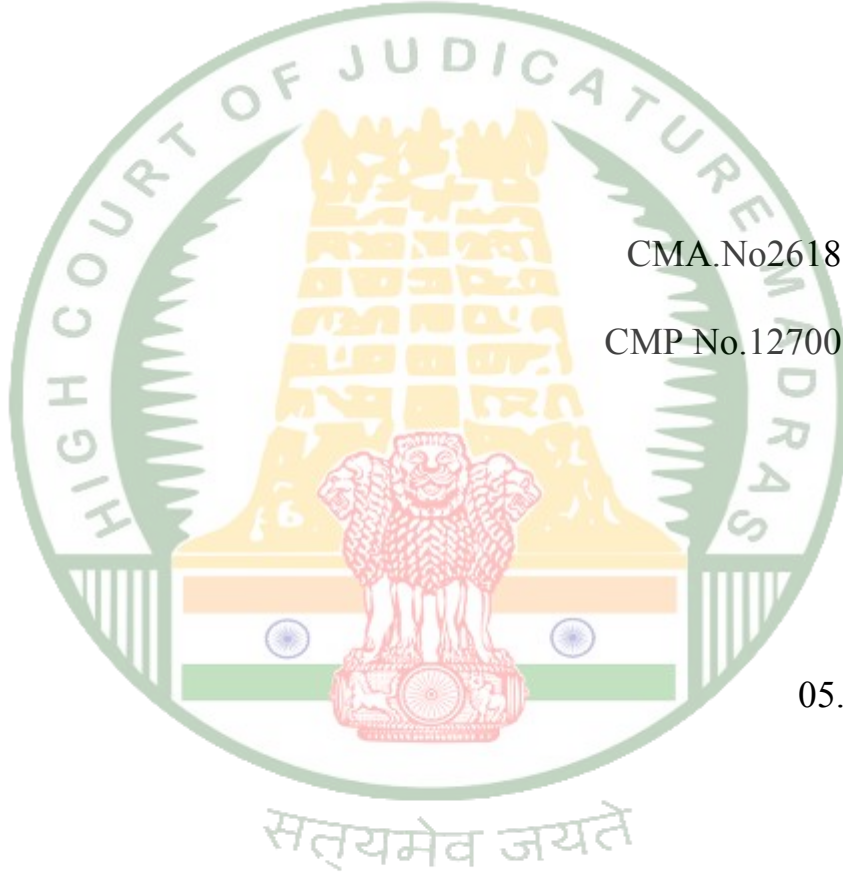


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ABDUL QUDDHOSE, J.

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