



A.S.(MD).No.59 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD).No.59 of 2014
and
C.M.P.(MD).No.3633 of 2023
and
M.P.(MD).No.1 of 2014

D.A.Ashok Kumar

... Appellant/Defendant

-Vs-

1.Rajeswari
2.Haridoss
3.Vennila Rosammal

... Respondents/Plaintiffs

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 20.12.2013 passed in O.S.No.120 of 2010, on the file of the I Additional District Judge (PCR), Tiruchirapalli.

For Appellant : Mr.N.C.Ashok Kumar
for Mr.P.Vinoth

For Respondents : Mr.G.S.Asok Adhithyan



A.S.(MD).No.59 of 2014

WEB COPY

J U D G M E N T

This appeal has been filed challenging the preliminary decree for partition granted by the I Additional District Judge (PCR), Tiruchirapalli in O.S.No.120 of 2010, dated 20.12.2013.

2. The brief facts leading to the filing of this appeal are as follows:

The plaintiffs and the defendant are brothers and sisters. The suit properties are owned by their father viz., Durairaj. He died on 03.11.2008, leaving behind the plaintiffs and the defendant as legal heirs. Their mother died on 26.11.2006. Therefore, the plaintiffs filed the suit in O.S.No.120 of 2010, claiming $\frac{2}{3}$ rd share in the suit property. It is the case of the defendant that the father had executed an unregistered Will, dated 15.07.2008, bequeathing 'A' schedule property to the defendant and 'B' schedule property to the second plaintiff.

3. On the side of the plaintiffs, P.W.1 was examined and Exs.A1 to A9 were marked and on the side of the defendant, D.Ws.1 and 2 were examined and



A.S.(MD).No.59 of 2014

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4. Based on the above pleadings, the trial Court has framed the following issues:

(i) Whether the alleged Will dated 15.07.2008 is true, valid and binding on the plaintiffs?

(ii) Whether the plaintiffs are entitled for the relief of preliminary decree for partition of 3/4th shares in the suit properties?

(iii) To what other reliefs?

5. The trial Court, on the basis of the oral and documentary evidence, disbelieved the Will and granted partition. Challenging the same, the present appeal came to be filed by the defendant.

6. During the pendency of the appeal, an application in C.M.P.(MD).No. 3633 of 2023 has been filed for reception of (i) release deed executed by the respondents herein in favour of the appellant, (ii) release deed executed by the respondents 1 and 2 and the appellant in favour of the third respondent and the



A.S.(MD).No.59 of 2014

WEB COPY

subsequent cancellation deed executed by the respondents, as additional documents in the appeal. According to him, these documents came into existence, during the pendency of the appeal and these documents are necessary for effective decision of the appeal. Hence, the application has been filed for reception of additional documents. No counter has been filed by the respondents.

7. Now, the learned counsel appearing for the appellant would submit that *de hors* the Will produced by the appellant before the trial Court, the fact remains that the respondents executed a release deed relinquishing their right in favour of the appellant in respect of item No.I, whereas, the appellant has also executed a release deed relinquishing his right in respect of item No.2 in favour of the third respondent herein. After executing the release deed, now the respondents have executed an unilateral cancellation deed, cancelling the release deed in respect of item No.1. Hence, these documents are necessary.

8. The learned counsel appearing for the respondents has not disputed the execution of the documents. According to him, since one of the respondents has not received the consideration in the release deed, subsequent cancellation



A.S.(MD).No.59 of 2014

WEB COPY

deed came into existence. However, it is his contention that the second respondent is a bachelor and he has undergone surgery and he may be permitted to reside in item No.1 till his life time. Whereas, the learned counsel appearing for the appellant would submit that the second respondent should give an undertaking before this Court that he will not take any alcohol while residing in the house. For that, the learned counsel appearing for the respondents would submit that he will file an undertaking affidavit before this Court.

9. Though the appeal has been filed against the decree and judgment, as the parties have executed the documents subsequently admitting their right in the suit properties, these documents are necessary to be brought on record and no oral evidence required as stated by both sides. Accordingly, the C.M.P.(MD).No.3633 of 2023 is ordered and the documents are received as Exs.B3 to B5, on the side of the defendant.

10. Now, the point arise for consideration in this appeal is whether the parties having executed the release deed, still they entitled to preliminary decree for partition as granted by the trial Court? It is admitted that the respondents



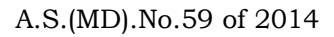
A.S.(MD).No.59 of 2014

WEB COPY

herein had executed the release deed dated 28.03.2016 in favour of the appellant in respect of item No.1. Thereafter, the same has been unilaterally cancelled on 27.05.2016, after three months.

11. It is relevant to note that once the document has been registered validly, unilateral cancellation is not permissible under law, unless the revocation is specifically reserved in the document itself. Once the right has already been transferred by executing the release deed, the revocation unilaterally is not permissible under law.

12. In such a view of the matter, the respondents now cannot contend that in view of the subsequent cancellation, the release deed executed by them is not valid in the eye of law. It is relevant to note that the contention that the cancellation has been effected only to non-payment of consideration is also cannot be countenanced, for the simple reason that in the revocation deed no averment whatsoever made with regard to non-payment of the amount. Therefore, once the registered document is admitted, the parties cannot go beyond the terms.



14. As per the release deed executed by the parties, the appellant is entitled to first item of the property and the third respondent in the appeal is entitled to second item of the property. It is also admitted by the appellant that he will permit the second respondent, his own brother, to reside in a single room provided, he will not take alcohol. The learned counsel for the respondents also submitted that he will not take any alcohol while residing in the single room permitted by the appellant and if the second respondent is continued to take alcohol and indulged in any nuisance in the building, it is open to the appellant to evict him as per the terms.



A.S.(MD).No.59 of 2014

WEB COPY

15. With the above direction, this Appeal Suit is disposed of. No costs.

Consequently, the connected Miscellaneous Petition is closed.

25.04.2023

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To

1.The I Additional District Judge (PCR),
Tiruchirapalli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD).No.59 of 2014

N.SATHISH KUMAR, J.

akv

A.S.(MD).No.59 of 2014

25.04.2023