



S.A. (MD) No. 415 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06/08/2025

CORAM

THE HONOURABLE MR. JUSTICE **G. ARUL MURUGAN**

S.A. (MD) No. 415 of 2018

and

CMP (MD) No. 11833 of 2018

K. Periyammal : Appellant/Respondent/
Plaintiff

Vs.

1. K. Karuppanagounder (Died) : 1st Respondent/Appellant/
Defendant

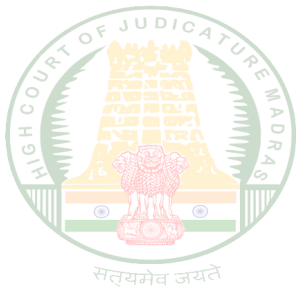
2. Selvaraj : 2nd Respondent/LR of the
deceased sole respondent

(2nd Respondent is brought on record
as LR of the deceased Sole Respondent
vide Court Order, dated 20/03/2025
made in CMP (MD) Nos. 2374, 2376 and
2378 of 2025 in SA (MD) No. 415/2018)

PRAYER:- Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree, dated 11/06/2018 in AS No. 115 of 2017 on the file of the Additional District Court (Fast Track), Palani, reversing the judgment and decree in OS No. 162 of 2010 on the file of the District Munsif, Ottanchathiram, dated 07/02/2014.

For Appellant : Mr. K. Ilangovan

For 2nd Respondent : Mr. G. Sridharan



S.A. (MD) No. 415 of 2018

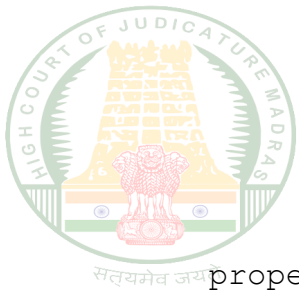
J U D G M E N T

WEB COPY

The plaintiff is before this court on appeal. The Second Appeal is filed challenging the judgment and decree, dated 11/06/2018 made in AS No.115 of 2017 on the file of the Additional District Court, Palani, reversing the judgment and decree, dated 07/02/2014 passed in OS No.162 of 2010 on the file of the District Munsif Court, Ottanchathiram.

2.For the sake of convenience, the parties are referred to, as per their litigative status before the trial court.

3.It is the case of the plaintiff that the plaintiff is the daughter of the defendant Karuppanna Gounder. Karuppanna Gounder also had a son namely Karuppusamy. The suit properties are the ancestral properties belonging to the plaintiff, defendant and her brother Karuppusamy. There was a partition effected on 11/10/1995 through a registered partition deed by which the joint family properties were divided and in the partition, the defendant was granted the 'A' schedule property in that deed. Partition deed is filed as Ex.A1. The defendant who became the absolute owner in respect of that 'A' schedule



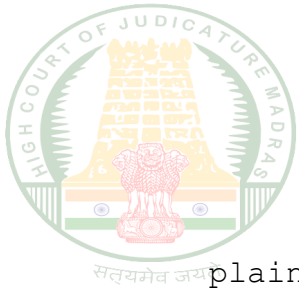
S.A. (MD) No. 415 of 2018

WEB COPY

property through the partition, had executed a settlement deed on the same day i.e., on 11/10/1995 in Ex.A2 in favour of the plaintiff. The plaintiff, based on the partition deed had taken possession and is in enjoyment of the suit property. Revenue documents were mutated and patta has been issued in favour of the plaintiff in Ex.A3. The plaintiff had also paid taxes to the property given to her.

4.It is the further case of the plaintiff that without the knowledge of the plaintiff at the instigation of the third parties, the defendant had unilaterally cancelled the settlement deed, dated 11/10/1995 by a cancellation deed, dated 07/06/2010 in Ex.A5. The plaintiff came to know about the same through other villagers. The unilateral cancellation of the settlement deed is a void document and that will not bind the plaintiff. Since in view of the cancellation executed the plaintiff's right is questioned, she had come up with the suit for declaration and consequential injunction.

5.The defendant resisted the suit contending that even though, he had a partition deed executed on 11/10/1995, the properties were not handed over to the



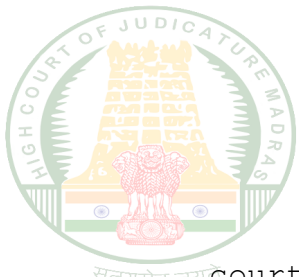
S.A. (MD) No. 415 of 2018

WEB COPY

plaintiff in view of the settlement deed executed on the same day. At the time of execution of the partition deed, his son had taken signatures in the settlement deed in Ex.A2. The defendant never intended to execute any settlement to the plaintiff. The possession of the property was also not handed over and the properties are still in the enjoyment of the defendant. Since the settlement deed came to be executed by fabrication, the defendant had executed the cancellation document, dated 07/06/2010 cancelling the settlement. The defendant continues to be the owner. Therefore, sought for dismissal of the suit.

6.During trial, the plaintiff examined herself as PW1 and marked Exs.A1 to A6. On the side of the defendant, the defendant examined himself as DW1 and also Ramalingam as DW2 and marked Ex.B1.

7.The trial court, after analyzing the evidences came to the conclusion that the cancellation deed executed by the defendant in Ex.A5 cannot be accepted, since the recitals in the document does not say that the settlement was executed by fraud and coercion. The trial



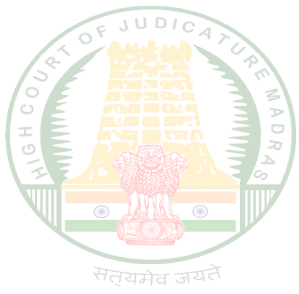
S.A. (MD) No. 415 of 2018

WEB COPY

court by also finding that in view of the mutation of the tax receipts filed, the plaintiff is in possession of the property decreed the suit granting declaration and permanent injunction. The trial court also on finding that since the plaintiff has established title, possession follows title and therefore, decreed the suit for declaration and injunction.

8. Appeal was preferred by the defendant. In the appeal, additional written statement came to be filed, wherein it was contended that since only undivided share was granted in the settlement deed, the course open to the plaintiff is only to seek for partition and separate possession.

9. The lower appellate court reappraised the evidences and by placing reliance on the decision of the Hon'ble Full Bench of this court, came to the conclusion that since undivided share in the property was granted through the settlement in Ex.A2, the plaintiff would only be entitled to seek for partition and separate possession and the suit filed seeking for declaration and injunction is not maintainable as against the co-owner.



S.A. (MD) No. 415 of 2018

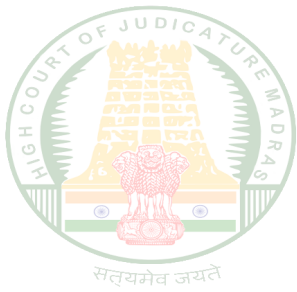
WEB COPY

10. The appeal came to be allowed and the judgment and decree of the trial court was set aside. Assailing the reversal of the decree and judgment by the lower appellate court, the plaintiff is before this court on appeal.

11. The second appeal is admitted on 14/12/2018 for the following substantial questions of law:-

(A) In the event of cancellation of Settlement Deed, whether the appellant/plaintiff has to file a suit for declaration of title or a suit for partition?

(B) Whether the judgments relied on by the First Appellate Court-2014(5) CTC 507 and 2009(5) CTC 380 were applicable to this case, and the above two judgments are only applicable to the possession of the property and the suit filed for permanent injunction but for suit for declaration. In 2009(5) CTC 380, the Hon'ble Supreme Court held that in



WEB COPY

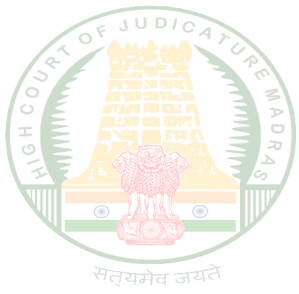


S.A. (MD) No. 415 of 2018

para 11 "Thus in view of the above the law emerges to the effect that in a given case an undivided share of a coparcener can be a subject matter of sale/transfer.

(C) Whether the learned Additional District Judge failed to consider that the respondent had lost limitation to cancel the Settlement Deed under the Limitation Act, 1963, which provides the maximum period of Twelve years?

(D) Whether the learned Additional District Judge failed to understand that the Sub-Registrar had no powers to register the Cancellation Deed, since it is nowhere power has been given to the Sub-Registrar for cancellation of registered Deed in the Registration Act, 1908, as it is ruled by the Hon'ble Supreme Court of India in Satyapal Anand Vs. State of M.P. Judgment dated 28.10.2016 held that "once the document is registered, it is not given to any authority,



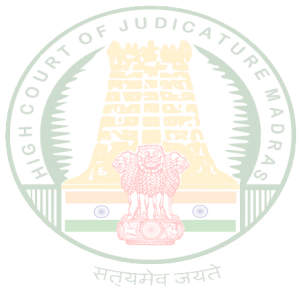
S.A. (MD) No. 415 of 2018

WEB COPY

*under the Registration Act of 1908 to cancel
the Registration.*

12.The learned counsel appearing for the appellant argued that when the suit properties came to be settled in favour of the plaintiff in Ex.A2, the plaintiff became the absolute owner and any cancellation effected in her absence would not bind her and since based on the cancellation document the defendant interfered in the rights of the plaintiff, the plaintiff had rightly sought for declaration and injunction in the suit property.

13.It is his further contention that the defendant was handed over possession of the property through the partition deed in Ex.A1 and the same property was settled and handed over by the defendant to the plaintiff through the document in Ex.A2. It is his vehement contention that when the defendant denies the right of the plaintiff through the cancellation deed in Ex.A5, the judgment and decree of the lower appellate court in setting aside the declaration granted and relegating the plaintiff to seek for partition is erroneous. When the plaintiff's right over the properties is declined, then she will not be in a position to succeed in the partition.



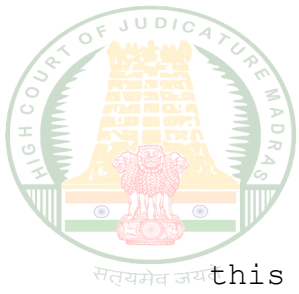
S.A. (MD) No. 415 of 2018

WEB COPY

14.The learned counsel further contended that when there is no dispute with the other co-owner who is her brother, the suit filed as against the defendant, who is the father is maintainable since he is not a co-owner in the property. The lower appellate court, without considering these aspects had simply on finding that only a suit for partition will be maintainable against the co-owner, had reversed the judgment and decree of the trial court which is perverse and sought for interference of this court.

15.Contending contra, the learned counsel appearing for the 2nd respondent argued that the defendant has every right to cancel the settlement executed as the terms has not been acted upon and therefore, in view of the cancellation of Ex.A5, the plaintiff is no longer owner and the defendant continues to have right over the suit properties.

16.The learned counsel further contended that, when a co-owner transfers his right over an undivided share, the transferee cannot be put in possession of the undivided share. The only remedy to the transferee would be to seek a partition with the other co-sharer and for



S.A. (MD) No. 415 of 2018

WEB COPY

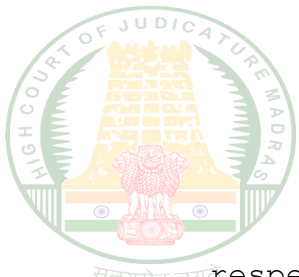
this proposition, he relied on the decision of the Hon'ble Supreme Court in the case of **Gajara Vishnu Gosavi Vs. Prakash Nanasaheb Kamble and others** reported in **2009(5) CTC 380**.

17. It is his further vehement contention that the lower appellate court had rightly based on the settled legal propositions had relegated the plaintiff to seek for the relief in a partition suit, which needs no interference and sought for dismissal of the appeal.

18. Heard the rival submissions and perused the materials available on record.

19. A partition has been executed between the defendant and his son Karuppasamy is admitted by the parties. The plaintiff is the daughter of the defendant who has another son Karuppasamy is also admitted. A partition deed in Ex.A1, dated 11/10/1995 is executed between the defendant and his son. As per the partition deed, undivided shares in all the items of the suit properties have been partitioned between the defendant and his son. Pursuant to the partition executed between the co-owners, the defendant became the absolute owner in

10/19



S.A. (MD) No. 415 of 2018

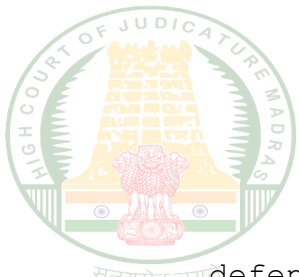
WEB COPY

respect of the share allotted to him, which is in schedule 'A' in the partition deed in Ex.A1 and his son became the absolute owner in respect of the undivided share granted to him in the suit properties as schedule 'B'.

20.The defendant having become the absolute owner for the properties in schedule 'A' of the document in Ex.A1 had executed a settlement deed in favour of his daughter the plaintiff on the same day i.e., on 11/10/1995 in Ex.A2. Pursuant to the settlement deed having been executed, the plaintiff became the absolute owner of the suit property that was settled in her favour. It is the case of the plaintiff that pursuant to the settlement deed, she was up in possession of the property and she had been issued with the patta and based on which she also paid the property tax.

21.The defendant contends that at the time of partition, his son had obtained a settlement deed in favour of the plaintiff, which was never intended to by the defendant. The defendant claims that he continues to be in possession and enjoyment of the property in respect of the share which was granted to him in Ex.A1. The

11/19



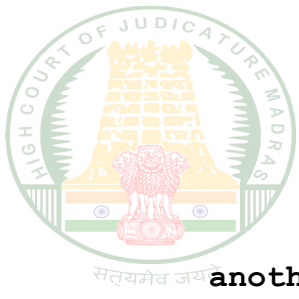
S.A. (MD) No. 415 of 2018

WEB COPY

defendant went ahead and executed a cancellation deed, dated 07/06/2010 in Ex.A5 whereby the defendant unilaterally cancelled the settlement deed executed in favour of the plaintiff in Ex.A2. The recitals of Ex.A5 cancellation deed does not go to show that, the cancellation is effected in view of the fact that settlement in Ex.A2 came to be executed by fraud and coercion.

22.It is to be noted that the defendant had not challenged the settlement deed, dated 11/10/1995 in Ex.A2 on the ground of fraud and coercion. On the other hand, the defendant had unilaterally executed the cancellation deed, dated 07/06/2010 in Ex.A5 cancelling the settlement deed in Ex.A2.

23.In this regard, it is useful to refer to two Full Bench decisions of this court, wherein the unilateral cancellation of the document had been gone into and decided. In the case of **M/s.Latif Estate Line India Vs. Hadeeja Ammal and others**, reported in 2011-1-L.W.673 and the other Full Bench decision in the case of **Sasikala Vs. Revenue Divisional Officer, Sub Collector, Devakottai and**



S.A. (MD) No. 415 of 2018

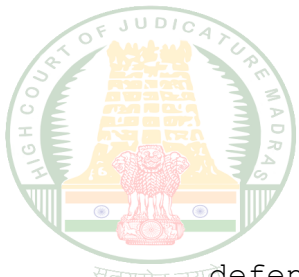
WEB COPY

another, reported in **2022 (5) CTC 257**, it has been held that any unilateral cancellation of a settlement deed would be a void document.

24. In view of the settled position of law, the unilateral cancellation of the settlement executed by the defendant on 07/06/2010 in Ex.A5 is a void document and the same will not affect the rights of the plaintiff. The plaintiff continue to hold valid title and be an absolute owner of the property settled through the settlement deed in Ex.A2. The defendant has no right in the suit properties.

25. The trial court had decreed the suit concluding that the plaintiff had proved title and had further granted the relief of injunction on the proposition that possession follows title. However, the lower appellate court reversed the judgment and decree only on the ground that the plaintiff being a co-owner can only seek for partition and separate possession and the suit for declaration and permanent injunction is not maintainable.

26. In this regard, it is to be noted that, the plaintiff had come up with the suit as against the

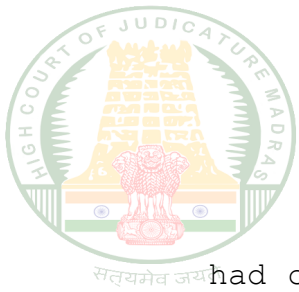


S.A. (MD) No. 415 of 2018

WEB COPY

defendant's father. Since the defendant denied the right of the plaintiff, which was settled in her favour in Ex.A2, based on the cancellation executed in Ex.A5, it was necessitated for the plaintiff to seek for a declaration and injunction as against the defendant. However, when the plaintiff was only settled with an undivided share in the suit properties, the plaintiff being a transferee who is having an undivided right in the suit properties would be only entitled to seek for a partition and separate possession in respect of her share. A co-owner cannot maintain a suit for injunction or seek an injunction as against the co-owner. The remedy of the co-owner would be only to seek for partition and separate possession. The lower appellate court while applying the said principles and on coming to the conclusion that the injunction sought for by the plaintiff cannot be sustained, since she being a co-owner of undivided share, had erroneously went ahead and reversed the decree in respect of declaration also. To this extent, the judgment and decree of the lower appellate court are perverse which needs interference.

27. In view of the fact that the plaintiff had come up with the suit as against the defendant's father, who



S.A. (MD) No. 415 of 2018

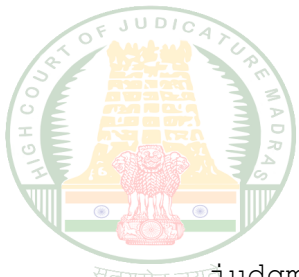
WEB COPY

had cancelled the settlement deed through Ex.A5, the suit filed by the plaintiff seeking for declaration is maintainable. Further, in view of the settled proposition that any such unilateral cancellation is void, the judgment and decree of the lower appellate court in so far as reversing the judgment and decree of the trial court for declaration is set aside.

28.As rightly noted by the lower appellate court, the plaintiff being a co-owner cannot seek an injunction and the remedy open to the plaintiff would be to file a suit seeking for partition and separate possession in respect of her share against the other co-owner her brother. To this extent, the judgment and decree of the lower appellate court in dismissing the suit regarding permanent injunction is sustained.

29.In view of the above deliberations, all the substantial questions of law are answered in favour of the appellant and as against the respondents.

30.The second appeal stands partly allowed and the judgment and decree of the lower appellate court in so far as the relief of declaration is set aside and the



S.A. (MD) No. 415 of 2018

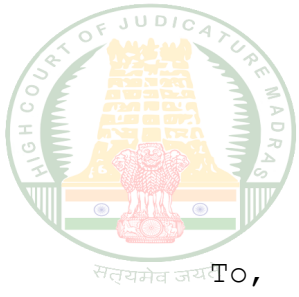
WEB COPY

judgment and decree of the trial court stands partly restored. However, in so far as the relief of permanent injunction is sustained and the suit stands dismissed in respect of the relief of injunction. It is open to the plaintiff to file an appropriate suit seeking for partition and separate possession as against the other co-owner.

31. With these observations, the second appeal stands **partly allowed**. However, there is no order as to costs. Consequently, connected Miscellaneous petition is closed.

06/08/2025

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
er

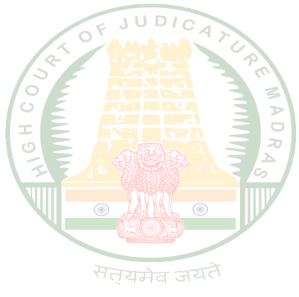


S.A. (MD) No. 415 of 2018

To,

WEB COPY

1. The Additional District Court.
(Fast Track), Palani.
2. The District Munsif,
Ottanchathiram. Dindigul District.
3. The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



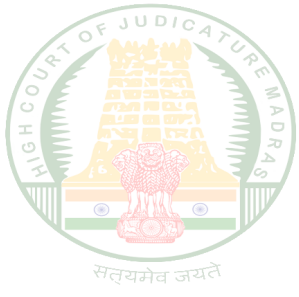
S.A.(MD)No.415 of 2018

G.ARUL MURUGAN, J.

er

S.A.(MD)No.415 of 2018

06/08/2025



WEB COPY



S.A. (MD) No. 415 of 2018