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Court : Chennai

Decided On : Feb-18-2013

Judge : G.Rajasuria

Appellant : Pachiyannan

Respondent : Kasthuri

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:18.02.2013 Coram: THE HONOURABLE MR.JUSTICE G.RAJASURIA S.A.No.118 of 2013 and M.P.No.1 of 2013 Pachiyannan (died) 1. Murugesan 2. Rajamanickam .. Appellants vs.

1. Kasthuri 2. Sengodan 3. Palaniyammal 4. Selvam 5. Kanaga 6. Periyasamy 7. Arthanari 8. Pavayee 9. Rajeswari 10.Selvi @ Tamil Selvi .. Respondents This second appeal is focussed as against the judgment and decree in A.S.No.99 of 2008 dated 29.11.2011 passed by the Subordinate Judge, Thiruchengodu reversing the judgment and decree in O.S.No.362 of 1989 dated 26.09.2006 by the learned District Munsif, Thiruchengodu. For Appellants : Mr.S.Parthasarathy

This second appeal is focussed by the original defendant 2 and 3, animadverting upon the judgement and decree dated 29.11.2011 passed in A.S.No.99 of 2008 by the Subordinate Judge, Thiruchengodu, reversing the judgment and decree of the learned District Munsif, Thiruchengodu in O.S.No.362 of 1989.

2. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

3. A re'sume' of facts absolutely necessary for the disposal of this Second Appeal would run thus: The gist and kernel of the averments in the plaint filed by Kasthuri, the first respondent herein would run thus: The suit properties originally belonged to two brothers namely Sengoda Gounder and Kandappa Gounder as their ancestral properties. Sengoda Gounder had two sons, of whom, Pachiyannan/D1 is the first son and Pachiyannan's sons are Murugesan/D2 and Rajamanickam/D3. Sengoda Gounder's one other son was deceased Mani @ Ramasami, who died leaving behind his wife Kasthuri, the plaintiff. The said Kandappa Gounder had one son by name Chinna Gounder. Both Kandappa Gounder and Chinna Gounder died. However, Chinna Gounder's children are Kandasamy/D4, Palaniappan/D5 and Sengodan/D6. Kandasamy/D4, died during trial and his L.Rs. were not impleaded. Palaniappan/D5 died at the appellate stage and his L.Rs. Palaniammal/D7 and Selvam/D8 were added at the appellate stage. However, during the appellate stage, L.Rs. of D4 also were added.

4. Precisely the case of the plaintiff is that there was no partition of the suit properties and hence, she sought 1/4th share representing the share of her husband Mani @ Ramasami, S/o Sengoda Gounder.

5. D1 to D3 filed the written statement mainly contending that during the life time of Mani @ Ramasami, so to say, the husband of the plaintiff, he executed Ex.B1, an unregistered release deed and thereafter, pendente lite there emerged a partition deed among D1 to D3. It so happened that the trial Court dismissed the suit on the main ground that D4's L.Rs., were not added.

6. Being aggrieved by and dissatisfied with the same, the appeal was filed, whereupon, the appellate Court decreed the suit allotting 1/4th share as prayed for accepting the case as put forth by the plaintiff, but disbelieving the case of Pachiyannan/D1 and his sons D2 and D3.

7. Pachiyannan subsequently died. Since Pachiyannan/D1 died, challenging and impugning the judgment and decree of the first appellate Court, his sons, D2 and

D3 preferred this Second Appeal on various grounds and also suggesting the following substantial questions of law: "(i) Whether the Lower Appellate Court is right in coming to the conclusion that impleading necessary parties at the stage of appeal is maintainable without impleading then at the trial stage? (ii) Whether the Lower Appellate Court is right in coming to an conclusion that Ex.B1 cannot be relief upon since the Appellants was not made as a party? (iii) Whether the Lower Appellate Court is right in coming to the conclusion that Ex.B2 Partition deed cannot be relied upon as 1st Respondent's husband was not made as a party. When he has relinquished his rights in the suit property by way of Ex.B-1?" (extracted as such) 8. Heard the learned counsel for the defendants, who would implore and entreat, project and portray as though Ex.B1 is an admissible piece of document. His contention is that since Ex.B1 is relating to a family arrangement, the question of registration does not arise. Over and above that, the first appellate Court on seeing that the trial Court did not decide the case on merits, but simply dismissed the suit on the ground that L.Rs of D4 were not impleaded, instead of remanding the matter back to the trial Court to decide the case afresh, assumed to itself the role of a trial Court and decided the case as though it is a trial Court itself, warranting interference in the Second Appeal.

9. At the outset itself, I would like to fumigate my mind with the following decisions:

2008. 2) CTC 1.THAILAMMAI AND OTHERS V. KARUPPANAN AND OTHERS (judgment of the High Court of Madras), certain excerpts from it would run thus: "13. Ex.B5 is nomenclatured as divorce cum property release deed dated 24.3.1983, which is an unregistered and unstamped one, but the trial Court simply marked it without any reservation. D.W.3 claiming to be knowing about the family affairs of the first defendant, is one among the signatories of Ex.B5. The trial Court committed error in marking Ex.B5 as Muchalika. It is the duty of the trial Court to see as to whether the document is a properly stamped one or not. Ex facie and prima facie, it is clear that the said Ex.B5 is an invalid, unstamped and unregistered document attracted proper stamp duty and registration in view of it envisaging relinquishment of the first plaintiff's right over the immovable property worth more than Rs.100/-. It is a trite proposition of law that any immovable property worth more than Rs.100/- should be stamped properly and registered;

even for relying on collateral purposes, it should be properly a stamped one. As otherwise, stamp duty and penal duty should be collected and then only, it could be marked and relied on for collateral purposes. . . " 10. A mere running of the eye over the aforesaid precedents, would amply make the point clear that whenever there is a plea of relinquishment of one's right in a joint property, there should be a registered deed strictly in accordance with Section 17 of the Registration Act, but in this case, absolutely there is no such document available. The first appellate Court appropriately and appositely keeping in consonance with the settled proposition of law decided the case, warranting no interference in the Second Appeal. Ex.B3-the registered partition deed emerged among Pachiyannan and his heirs and that too pending suit, wherefore it is nothing but a self serving document.

11. I recollect the maxim: Res inter alios acta alteri nocere non debet A transaction between two parties ought not to operate to the disadvantage of a third 12. This maxim would exemplify and demonstrate that a person who is not a party to a document, is not bound by it. Accordingly if viewed, Ex.B3, which is a pendente lite document could only be labelled or dubbed as a self serving document, which would not bind Kasthuri the plaintiff in any manner.

13. A mere running of the eye over the judgment and decree of the trial Court would reveal that the trial Court took into account the entire gamut of the case, however, it thought fit that the lower Court's non impleadment of the L.Rs of D4 was fatal and accordingly, dismissed the suit. However, the first appellate Court, remedies the situation by permitting the plaintiff to implead the L.Rs. of D4 also and that Court being the last Court of facts was justified in deciding the lis on merits. As such, I could see no question of law much less substantial question of law is involved in this matter. Accordingly, this Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed. Gms To 1. The Subordinate Judge, Thiruchengodu 2. The District Munsif, Thiruchengodu

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