

S.A.No.11 of 2015**S.NAGAMUTHU, J.**

1. This appeal has come up today for admission. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents 2 to 9 as well as perused the records carefully.

2. The learned counsel appearing for the appellants would point out that originally the suit was filed for partition. During the pendency of the suit, a petition seeking to amend the plaint was made alleging that a partition in the presence of panchayatars took place on 11.01.1993 and a document known as 'Baga Pattika' was executed and based on the said document, the plaintiff prayed for declaration of title in favour of the plaintiff in respect of the suit scheduled property. The Trial Court dismissed the suit for partition but relying on the said document (Ex.B4) granted a decree for declaration, declaring the second suit schedule property in favour of the plaintiff. The learned counsel for the appellants would submit that there is no proof at all that the said document was either signed by the appellants or it was duly executed. The learned counsel for the appellants would further point out that the lower Appellate Court has held that as the first defendant was abducted in the year 2010

whereas the document carries the date as 11.01.1993, the signature in the document could not have been obtained after abduction. This reasoning, according to the learned counsel for the appellants is highly unreasonable when the execution of the document is denied and when the same is unregistered. According to the learned counsel giving antedate would not have been impossible for the plaintiff. The learned counsel would further point out that if the said partition was true, then the plaintiff would not have filed a suit for partition and subsequently amended the plaint to include a decree for declaration of title. In view of all the above, I find that this second appeal deserves admission on the following substantial questions of law:

i) Whether Ex.B4, the execution of which has been denied, could have been the basis for the Courts below for granting a decree for declaration of title ?

ii) Whether the Courts below were right in holding that Ex.B4 is a genuine document when there is no witness to prove the execution of the said document ?

iii) Whether the Courts below were right

in ignoring the fact that the first defendant was abducted and he was rescued on the intervention of a Criminal Court and before the Criminal Court he had made statement as to how he was abducted etc., ?

iv) Whether the Courts below were right in holding that since abduction had taken place in the year 2010, the Ex.B4 dated 11.01.1993 would not have been obtained after such abduction ?

v) Whether the Courts below were right in relying on Ex.B4 when the document has not been engrossed on necessary stamp paper and the same has not been registered ?

Notice.

17.02.2015

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