



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Civil Appellate Jurisdiction )

Tuesday, the Twenty Ninth day of November Two Thousand Sixteen  
PRESENT

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**The Hon`ble Mr.Justice S.S.SUNDAR**

CMP(MD) No.11188 of 2016

IN

SA(MD) No.584 of 2013

KAJAMYDEEN

... PETITIONER/APPELLANT

Vs

1 MOHAMMED KASIM  
THROUGH HIS POWER AGENT  
SAMSUDEEN, S/O.KATHARSHAW

2 THE VILLAGE ADMINISTRATIVE OFFICER,  
NADUMANDALAM VILLAGE, NATHAM TALUK,  
DINDIGUL DISTRICT.

3 THE TAHSILDAR,  
NATHAM TALUK, DINDIGUL DISTRICT.

4 THE DISTRICT COLLECTOR,  
DINDIGUL DISTRICT. DINDIGUL.

... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to receive the documents on the side of the appellant in S.A(MD)No.584 of 2013 as additional evidence and thereby render justice.  
[Promissory Note Original dated 04.09.2004].

**Prayer in SA(MD).584/2013 :**

The Appellant has preferred the Second Appeal under S.100 of Civil Procedure Code against the judgment and decree dated 15/03/2013 in A.S.No.79 of 2012 on the file of the Principal Sub Court, Dindigul confirming the judgment and decree 26/07/2012 in O.S.No.22 of 2008 on the file of the District Munsif Cum Judicial Magistrate, Natham.

**ORDER :** This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. H.LAKSHMI SHANKAR, Advocate for the petitioner and of MR.A.HARIHARAN, Advocate for R1 and of MR.S.SATHISH KUMAR, Additional Government Pleader for R2 to R4 and the Court made the following order:-

The appellant is the first defendant in the suit in O.S.No.22 of 2008 on the file of the District Munsif Court-cum-Judicial



Magistrate, Natham. The respondent filed a suit for declaration of plaintiff's exclusive title to the suit property and for consequential mandatory injunction directing the first defendant to remove the construction put up in the suit property and for recovery of possession. The suit property is an extent of 0.19.0 hectares in New Survey No.174/17 corresponding to the Old Survey No.985/III Part.

2.The suit was contested by the defendants on various grounds. It is to be seen that the identity of the plaintiff who has filed the suit was also raised as an issue by the appellant. The suit was decreed as prayed for and the appeal filed by the appellant also was dismissed. Aggrieved by the concurrent findings of the Courts below the above second appeal has been preferred.

3.At the time of admitting the Second Appeal, one of the substantial questions of law raised by the appellant is with regard to the identity of the plaintiff himself. In these circumstances, this Court earlier called upon the plaintiff / respondent to appear before this Court. According to the plaintiff, who was identified by the Power of Attorney holder of the appellant himself submitted that he was the one who filed the suit and that the power of attorney deed also was executed by him. However, the learned counsel for the appellant brought to the notice of this Court several circumstances apart from pointing out the discrepancy and notable difference between the signatures of the appellant in the plaint as well as the power of attorney deed executed by him. In the light of his serious contentions with regard to the identity of the plaintiff and the forgery of documents allegedly executed by the plaintiff in this case, this Court also permitted the appellant to file any other document or proof regarding the identity of the plaintiff. In that context, the learned counsel for the appellant has filed this petition to receive additional evidence under Order 41, Rule 27 C.P.C. seeking permission to let in a promissory note alleged to have been signed by the plaintiff. In the same promissory note, the thumb impression of the plaintiff is also affixed. In such circumstances, proof of those documents will narrow down the scope of this appeal as the evidence with regard to the genuineness of this document would certainly minimise the factual controversies and would certainly enable this Court to adjudicate this matter effectively. Hence, this document namely the promissory note executed by the plaintiff in favour of a third party on 04.09.2004 is received as additional evidence. However, in stead of remitting the matter to the trial Court or the appellate Court, this Court feel that it would be proper, having regard to the facts of this case, to call for a findings from the lower Appellate Court regarding the execution of the document by the plaintiff and the genuineness of the document which is now sought to be adduced by way of additional evidence. Hence, this petition to receive additional evidence is allowed and the lower Appellate Court namely, the Principal Sub Court, Dindigul, is directed to find out whether the



additional document was executed by the plaintiff by affixing his thumb impression and by signing the document. In other words, the lower appellate Court is directed to frame an issue whether the signature and the thumb impression found in the additional document is by one and the same person and whether they tally with the signature of plaintiff in the suit. The parties are permitted to adduce further evidence including documentary evidence to prove the genuineness of the transaction under the promissory note which is now received as additional document and to prove the due execution of the document by the plaintiff in the sense that the signature and thumb impression found in the additional document are that of the plaintiff. This Court also *prima facie* of the view that the signature found in the plaint does not tally with the signature in the power of attorney deed. Hence, it is also necessary to find out whether the signature found in the plaint as well as the power of attorney deed are one and the same. The lower Appellate Court may also give its findings and send a report to this Court. The parties shall appear before the lower appellate Court on 22.12.2016.

sd/-

29/11/2016

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Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO

- 1 THE PRINCIPAL SUBORDINATE JUDGE, DINDIGUL.
- 2 THE DISTRICT MAGISTRATE CUM JUDICIAL MAGISTRATE, NATHAM,  
DINDIGUL DISTRICT.

+1. C.C. to M/S. H.LAKSHMI SHANKAR, Advocate SR.No.74447.

+1. C.C. to M/S. A.HARIHARAN, Advocate SR.No.74008.

Copy to:-

- 1 The Section Officer,  
VR Section, Madurai Bench of Madras High Court, Madurai.
- 2 The Additional Government Pleader,  
Madurai Bench of Madras High Court, Madurai.

ORDER IN  
CMP(MD) No.11188 of 2016  
IN SA(MD) No.584 of 2013  
Date :29/11/2016

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