

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM:

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

Original Side Appeal No.227 of 2017 and
C.M.P.No.15362 of 2017

T.Savithri

...Appellant

vs.

1.Shirininivasan
2.Nandha Gopal
3.S.Srinivasan
4.Subbulakshmi
5.S.Ramamoorthy
6.S.Lakshman
7.S.Srivasan
8.Venkateshwari

...Respondents

Original Side Appeal filed under Clause 15 of Letters Patent and Order 36 Rule 2 of the Original Side Rules, against the order and decreetal order dated 24.02.2017 made in Application No.17 of 2017 in C.S.No.657 of 2010 on the file of the Original Side of this Court.

Prayer in Appln.17/2017: This application has been filed to grant leave to the applicant to receive the documents mentioned in the judges summons as additional documents. The documents mentioned are:-

- 1.Degree certificate given by Angila Ruskin to S.Raghuragavendra
- 2.Certificate of Incorporation
- 3.ISO Certificate 9001 : 2008
- 4.covering letter given by the Applicants Counsel along with the admitted Thumb Impressions of the Applicant with the questioned document.
- 5.Report given by the expert S.Raghuragavendra
- 6.Certificate of Training

7.certificate of Franchisee

8.Certificate of Authorisation

Prayer in C.S.657/10:

i) For declaration declaring that the plaintiff is the absolute owner of the suit Item No.1 and further directing the defendants 1 and 2 to quit and handover vacant possession of the same to the plaintiff.

ii) For declaration declaring that the registered deed of release dated.8.5.1969 is illegal null and void and not binding upon the plaintiff.

iii) for partition of the suit item No.2 into two equal parts and allot one such part to the plaintiff.

iv) for permanent injunction restraining the defendants, their agents, men or any other person claiming under or through them from alienating or encumbering the suit schedule mentioned properties.

v) for the costs of the suit.

For Appellant : Mr.S.Rajendrakumar

J U D G M E N T

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. This is an appeal preferred against the judgment and order, dated 24.02.2017, passed by the learned single Judge. The impugned judgment and order came to be passed on an application filed by the appellant/original plaintiff, seeking leave of the Court to receive documents mentioned in the Schedule annexed to the Judge's summons. The documents were sought to be tendered as additional documents.

2. The fulcrum of the dispute rests on the determination of the issue as to whether the release deed, dated 08.05.1969, was executed by the appellant. The appellant maintains that release deed, dated 08.05.1969, has not been executed by her. The appellant disputes her thumb impression on the release deed, dated 08.05.1969. It, apparently, is also the case of the appellant that she never visited the office of the Sub-Registrar, where, purportedly, the release deed got registered. Thus, the sum and substance of the case of the appellant in the suit pending adjudication before the learned single Judge is that the release deed is a forged and fabricated document.

3. The learned single Judge has dismissed the application preferred by the appellant, primarily for two reasons:-

3.1 First, that an exercise of this nature was undertaken, when, the left thumb impression of the appellant was taken in the presence of the Master, which was thereafter compared with the thumb impression on the release deed, dated 08.05.1969 by a forensic expert attached to the concerned Government Department. The report generated thereafter, revealed that the left thumb impression affixed in the presence of the learned Master on a given sheet of paper and that which is found on the registered release deed, dated 08.05.1969 were that of one and the same person.

3.2. Second, the appellant was re-agitating the issue, which had been looked at by the Court. According to the learned single Judge, this amounted to an abuse of process of law.

4. The learned counsel for the appellant says that while the finding of the forensic expert with regard to whether or not the thumb impression on the registered release deed is that of the appellant is final, what has not been examined, is whether the appellant visited the office of the Sub-Registrar.

5. Thus, the learned counsel's submission is that, if the purported signature found in the register maintained in the office of the Sub-Registrar with regard to thumb impressions is examined with the admitted thumb impression of the appellant, the truth with respect to this aspect of the matter would come to light.

6. According to us, apart from the fact that this submission is interlinked with the submission made by the appellant that the thumb impression found on the release deed was not hers, the fact remains that nearly 41 years have passed, since, the release deed was executed. To our minds, exercise of the kind that the appellant wants to take the Court to conduct, would further delay the proceedings. Already seven (7) years have passed, since the institution of the suit.

7. Furthermore, the credibility of the appellant's stand is in some doubt, in view of the report rendered by the forensic expert, to which we have made a reference above. However, we do not want to comment further on this aspect of the matter, as it could impact the trial.

8. In our view, the learned single Judge has correctly approached the matter. Therefore, in our opinion, no interference is called for with the impugned judgment and order.

9. Accordingly, the appeal is dismissed. There shall, however, be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

svki

TO

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+lcc to Mr.S.Rajendra Kumar, Advocate SR.No.66275

O.S.A.No.227 of 2017

RSY(CO)
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