

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 27.09.2018

CORAM
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.297 of 2012
and
M.P.No.1 of 2012

1. Loorthanthuvan

2. Magimainathan ... Appellants / Respondents /
Defendants

Vs.

1. S.Anthonimuthu

2. S.Eruthayam

3. S.Xavier ... Respondents / Appellants / Plaintiffs

The Civil Miscellaneous Appeal is filed under Section 43 Rule 1(V) of the Civil Procedure Code, against the Judgment and the decree in A.S.No.70 of 2010 on the file of the Additional Subordinate Court, Virudhachalam, dated 22.11.2011 in reversing the Judgment and decree in O.S.No.274 of 2003 on the file of the II Additional District Munsif Court, Vridhachalam, dated 29.01.2010.

For Appellants : Mr.V.Raghavachari

For Respondents : Served
No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed against the Judgment and decree in A.S.No.70 of 2010 on the file of the Additional Subordinate Court, Virudhachalam, dated 22.11.2011 in reversing the Judgment and decree in O.S.No.274 of 2003 on the file of the II Additional District Munsif Court, Vridhachalam, dated 29.01.2010.

2. Originally, the suit was filed for declaration of title and permanent injunction restraining the defendants, their men or agents from interfering with the peaceful possession of the plaintiffs, over the suit properties. The appellants herein, were the defendants in the suit and the plaintiffs in the suit, are the respondents in this Appeal.

3. By an order dated 22.11.2011, the Lower Appellate Court remanded the matter back to the Trial Court, by setting aside the Decree and Judgment, and directed the Trial Court to pass a fresh Judgment, by examining the report of the hand writing expert after issuance of the summons to the hand writing expert, and by giving necessary opportunities to both the parties to cross examine the said hand writing expert.

4. Aggrieved by the said Judgment, the present Civil Miscellaneous Appeal has been filed by the appellants herein, raising the following substantial questions of law.

(1) Whether the Lower Appellate Court is justified in remanding the suit to Trial Court contrary to the provision under Order 41 Rule 23 of the Civil Procedure Code?

(2) Is the Lower Appellate Court justified in remanding the case after prima facie concluding the suspicious nature under which the will under Ex.A1 was brought into existence?

(3) Whether the learned Judge is right in rejecting the expert evidence under Ex.C.5 for his non examination, when the court has power to made comparison of signature under Section 73 of the Evidence Act.

5. The Civil Miscellaneous Appeal has been pending for the past 6 years. Even though, the respondents and the appellants have been served with the notice and their names printed in the cause list, they have neither chosen to engage an Advocate nor appeared before this Court in person. Today, i.e. on 27.09.2018, when the matter is taken up for final disposal, the learned counsel for the appellants, namely, Mr.V.Raghavachari, has produced the case status paper before this Court, wherein, it could be seen that initially, O.S.No.274 of 2003 was heard on 27.09.2013, and after several adjournments, on 03.02.2017, the said Original Suit came to be dismissed for default, by the II Additional District Munsif Court, Vridhachalam, on the ground that on 04.01.2017, the plaintiffs were directed to commence the trial, but, they have not complied with the said direction.

6. This Civil Miscellaneous Appeal has been filed only against the order of the Lower Appellate Court, remanding the matter back to the Trial Court for passing a fresh Judgment. But, when the suit itself dismissed for default, nothing survives in this Civil Miscellaneous Appeal for further adjudication. Moreover, the said suit has not been restored by the plaintiffs, by filing the set aside petition. Hence, this

Court is of the opinion that In case, if the suit is restored by the plaintiffs, liberty is given to the appellants to pursue this Civil Miscellaneous Appeal a fresh. Accordingly, the appellants are given liberty to file a fresh Civil Miscellaneous Appeal before this Court, if the suit is restored by the plaintiffs.

7. With the above observation, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

raja

To

1.The Additional Subordinate Court,
Virudhachalam.

2.The II Additional District Munsif Court,
Vridhachalam.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.67304

C.M.A.No.297 of 2012
and
M.P.No.1 of 2012

CP (CO)

RRS (02/04/2019)

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