

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.149 of 2018
and
C.M.P.No.8541 of 2018

1.K.Shivakumar

2.Meena Shivakumar .. Appellants

Vs

1.Murugesan
M.V. Krishna Rao(Since died)

2.Seetharajakumari

3.M.B.V.Sathya Sai Prasad

4.M.Suriyanarayanamurthy

5.M.Bagya Suryalakshmi

6.M.B.L.Raghaventhra Swamy

7.Uma Mageswari .. Respondents

Appeal preferred under Order XXXIX Rule 1 of O.S. Rules against the order and decretal order dated 06.03.2018 made in Application No.1282 of 2018 in C.S.No.925 of 2010.

Prayer in A. No. 1282/2018 in C.S.No.925 of 2010:

Application praying that this Hon'ble Court be pleased to to grant leave to the petitioner herein to bring on record the taped conversation contained in "IC Recorder ,Sony , Voice Operated Recording" that primarily took place between Mr.Shivakumar(D2) and Mr.S.Murugesan(D3) (Applicant) by or about May 2010 for (1 hour 40 minutes) and 7.6.2010 (1 hour 4 minutes) along with transcript of the entire conversation.

Prayer in C.S.No.925 of 2010:

Plaint filed under Order VII Rule 1 of C.P.C. r.w. order IV Rule 1 of O.S. Rules prays that this Hon'ble Court may be pleased to pass a decree

a) To declare the registered sale deed document bearing Regn.No.976 of 2010 on the file of Sub-Registrar office, Kodambakkam, executed by plaintiff in favour of 1st and 2nd defendant as null and void and not binding on plaintiff or any person claiming through him and cancel the same.

b) To grant permanent injunction restraining the defendant from alienating or in any manner encumbering the plaintiff's schedule property.

c) To direct the defendants to pay the costs of this suit.

For Appellants .. Mr.S.Sadasharam

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal has been preferred by the appellants, who are defendants 1 and 2 in the suit, which has been filed for declaration to declare the sale deed as null and void and to cancel the same. Pending the suit, an application was filed by the third defendant, who has been impleaded pursuant to the order passed by this Court, seeking to produce the tape recorded conversation as evidence along with the transcript. Learned single Judge allowed the application subject to admissibility, relevancy and proof. Challenging the same, the present appeal has been filed.

2.Mr.S.Sadasharam, learned counsel appearing for the appellants would submit that it is not for the third defendant in the suit/applicant to produce the document to substantiate the case of the plaintiff and Order 8 Rule 1 A of the Code of Civil Procedure prohibits such an application.

3.We are afraid that the said contention cannot be countenanced. The application has been filed by the third defendant placing reliance upon the stand taken by the plaintiff in the plaint as well as his written statement. Learned single Judge merely permitted the applicant to produce the evidence subject to relevancy, proof and admissibility. Therefore, the right of the appellant to question the same still remains at large. Order 8 Rule 1 A C.P.C. has got no application. We are not dealing with a counter claim. The aforesaid provision imposes a duty on the defendant to produce the documents upon which the relief is claimed by him. Such a situation is not available in the present case. Thus we do not find any merit in

the appeal. Accordingly, the Original Side Appeal is dismissed. However, we make it clear that the liberty granted by the learned single Judge stands. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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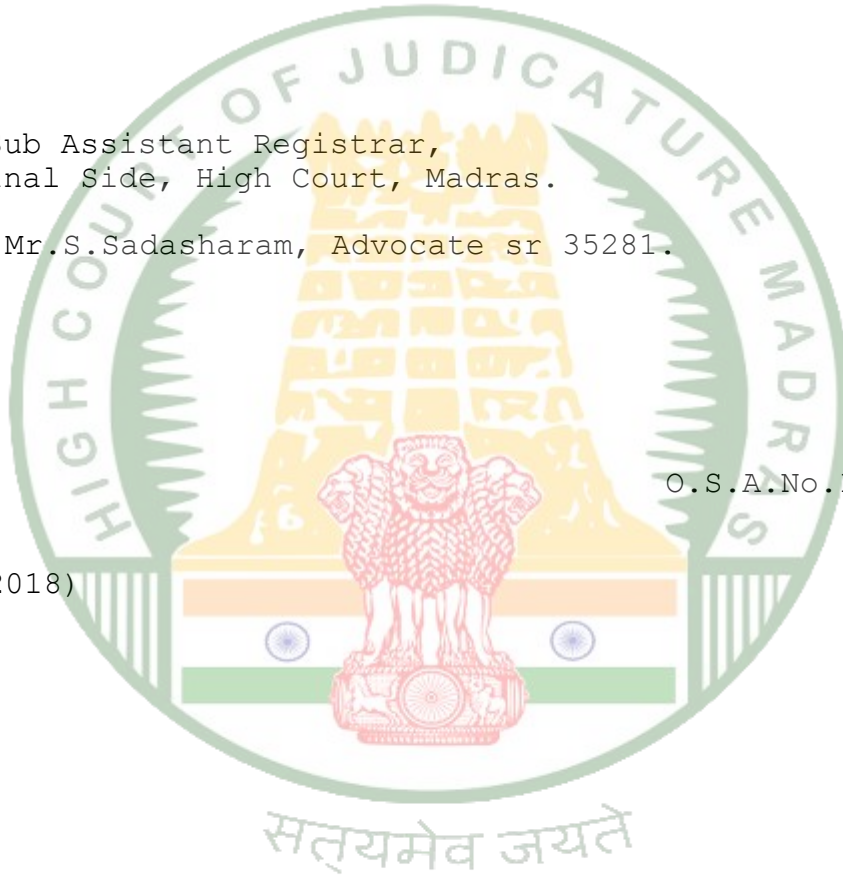
To

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

+2 Ccs to Mr.S.Sadasharam, Advocate sr 35281.

O.S.A.No.149 of 2018

PPA (CO)
SP (12/06/2018)



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