

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

O.S.A.No.422 of 2018
and
C.M.P.No.19110 of 2018

1.K.Shivakumar
2.Mrs.Meena Shivakumar Appellants

Vs

M.V.Krishna Rao ... Deceased plaintiff

1.Mrs.Seetharajakumari
2.M.B.V.Sathya Sai Prasad
3.M.Suriyanarayanamurthy
4.M.Bagya Suryalakshmi
5.M.B.L.Raghaventhra Swamy
6.Mrs.Uma Mageswari
7.Murugesan ... Respondents

PRAYER: Original Side Appeal filed against the fair and decreetal order dated 13.07.2018 passed in Application No.5130 of 2018 in C.S.No.925 of 2010 on the file of this Court.

Prayer in Application:5130/18: Application filed eschew the evidence of D.W.1.dated:18/04/2018 namely the oral evidence of D.W.1 and also marking of documents namely Exs.D-2 and D-3 in C.S.No.925 of 2010.

C.S.No.925 of 2010

a)Declaring 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) Granting permanent injunction restraining the defendants from alienating or in any manner encumbering the plaintiff's schedule property.

c) Mandatory injunction directing the defendants 1 and 2 to deliver vacant possession of their portion of occupation of the suit schedule of property more fully described in the suit as schedule-B property"

d) Directing the defendants 1 and 2 to pay Rs.75,000/- per month from April 2010 to till handing over the Schedule-B Property being the damages for their use and occupation of the schedule-B of the Plaintiff and;

e) Directing the defendants to pay the costs of this suit and

f) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Dated at Chennai this the 8th day of November 2010.

For Appellant : Mr.S.Sadasharam

JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

The defendants 1 and 2 are before this Court challenging the order of the learned Single Judge, dismissing the appellants' application for eschewing the evidence of DW1 (3rd defendant) dated 18.04.2018 and also marking of documents viz., Ex.D.2 and Ex.D.3 in the suit.

2. Heard Mr.S.Sadasharam, learned Counsel appearing for the appellants.

3. It is seen from the records that the suit has been filed by the deceased 1st respondent/plaintiff, seeking a declaration that the registered sale deed bearing registration No.976 of 2010 on the file of Sub Registrar Office, Kodambakkam executed by the plaintiff in favour of the appellants herein viz., 1st and 2nd defendants in the Civil Suit as null and void and not binding on the plaintiff. Subsequently, an application has been taken out by a 3rd party, who claimed the property through a Will allegedly executed by the deceased plaintiff to implead himself and the said application was allowed and he has also been made as 3rd defendant.

4. When the matter is posted for defendants' evidence, the 3rd defendant sought permission to examine himself as DW1 for which the appellants had no objection and DW1 was examined.

5. The grievance of the appellants is that after closing DW1's evidence, certain documents have been marked by the learned Master without following the procedure viz., without filing any recall or reopen petition for permitting to mark the documents. Therefore, the evidence of DW1 along with his documents viz., Ex.D2 and Ex.D3 have to be eschewed. The said application has been dismissed by the learned Single Judge, against which the present appeal has been filed.

6. The learned single Judge allowed the application in A.No.1282 of 2018 in which the learned single Judge permitted the 3rd defendant to mark the documents subject to proof and relevancy against which, an appeal in O.S.A.No.149 of 2018 was filed by the appellants and the same was dismissed by a Division bench of this Court on 07.06.2018. Thereafter only, the 3rd defendant/DW1 was permitted to mark those documents. From the facts of the case, it is very clear that the 3rd defendant was allowed to mark the documents subject to proof and relevancy by the learned single Judge and the same was taken on appeal and the appeal has been dismissed and therefore, there is nothing wrong in again recalling and reopening the evidence of DW1 and marking the documents.

7. The other contention is that without following the procedure, without any application on the side of the parties, the learned Master examined DW1 and allowed DW1 to mark the documents. It is only a procedural irregularity and it will not go to the root of the matter. The procedures are only handmaids of Justice. What is to be seen is whether there is necessity to recall DW1 and mark those documents. As already pointed out earlier, an application had been taken out and was allowed and permission was granted to mark the documents. Even in the absence of any application from the parties, Court itself, suo motu or oral request also could allow DW1 to examine himself and to mark the documents.

8. Therefore, there is no merit in the appeal filed by the appellants and the order of the single Judge is confirmed. However, it is open to the appellants to canvass the relevancy and the admissibility of those marked documents at the time of final disposal of the suit.

9.In fine, the appeal is dismissed. However there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Assistant Registrar,
Original side, High Court, Madras.

+2cc to Mr.S.Sadasharam, Advocate, S.R.No.74153

O.S.A.No.422 of 2018

GJII(CO)
GSP(27/11/2018)



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