



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

Tuesday, the Third day of April Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice M.SUNDAR

CMP(MD) No.10074 of 2017
IN
SA(MD) No.220 of 2004

1 KALIMUTHU PILLAI(DIED)
2 PANDIAMMAL
3 KAVERIAMMAL
4 MANOHARAN
5 SEKAR
6 KRISHNAMOORTHY
7 BABY KUMARI
8 MANI

... PETITIONERS 2to8/APPELLANTS 2to8

Vs

1 TMT.LAKSHMIAMMAL
2 SHOLAVANDAN PANCHAYAT
REP.BY ITS EXECUTIVE OFFICER,
SHOLAVANDAN, VADIPATTI TALUK,
MADURAI DISTRICT.

... RESPONDENTS 1&2/RESPONDENTS 1&2

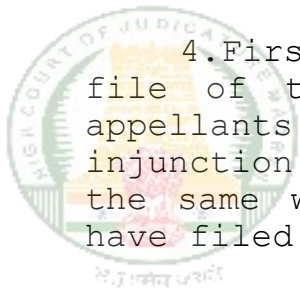
Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order directing the registry to return the original sale deeds dated 17/05/1957 and 02/05/1951 marked as Exhibits B2 and B3 in O.S.No. 272 of 1986 on the file of the District Munsif Court, Thirumangalam to the petitioner and to replace the certified copies filed along with this petition in the place of the Exhibits B2 and B3.

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.PT.S.NARENDRAVASAN, Advocate for the petitioners and of MR.R.SURIYANARAYANAN, Advocate for R1 and MR.M.RAJARAJAN, Advocate for R2 the court made the following order:-

Appellants 2 to 8 in the main second appeal are petitioners herein.

2.Respondents 1 and 2 in the main second appeal are respondents 1 and 2 herein respectively.

3.Parties in this petition are referred to by the respective ranks in the main second appeal for the sake of convenience and clarity.



4. First respondent filed a suit in O.S.No.272 of 1986 on the file of the District Munsif Court, Thirumangalam, arraying the appellants 1 and 2 as defendants therein. Suit was for a permanent injunction qua a pathway. Suit was decreed by the trial Court and the same was confirmed by the first appellate Court. Appellants have filed the instant second appeal way back in 2004.

5. As far as this petition is concerned, it pertains to two exhibits, that were marked in the trial Court, namely, Exhibit Nos.B.2 and B.3. Both are sale deeds, dated 17.05.1957 and 02.05.1951 respectively. It is the case of the appellants that the third appellant Kaveriammal is very ill, is down with cancer and according to the averments in the affidavit, she is terminally ill. The specific averment in this regard in the affidavit filed in support of the petition reads as follows:

"The Second Appeal is pending from 2004 and now the 3rd petitioner is counting her days".

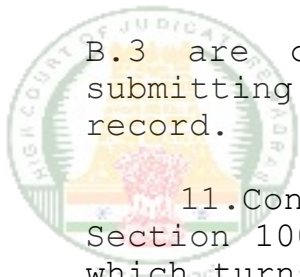
6. Appellants have filed certified copies of the aforesaid two exhibits i.e., Exhibit Nos.B.2 and B.3 along with this petition and their prayer is that they would substitute the certified copies in place of the original exhibits i.e., Exhibit Nos.B.2 and B.3, which now form part of the record of this Court. In the light of the third appellant being terminally ill, she is desirous of executing a settlement deed and when the settlement deed was presented before the jurisdictional Registrar's Office, the jurisdictional Registrar insisted on production of aforesaid original sale deeds for entertaining registration of the settlement deed and this, according to the appellants, has necessitated the filing of the instant petition.

7. It is also the specific case of the petitioners that the entire lis in this appeal pertains to a pathway and not to the title of the property, which is subject matter of Exhibit Nos.B.2 and B.3.

8. Be that as it may, I now turn to the respondents. With regard to first respondent, Mr.R.Suriyanarayanan, learned counsel, is before this Court. The learned counsel submits that the first respondent died on 03.11.2017. It is not in dispute that the demise of first respondent was not intimated to the learned counsel for the appellants earlier and that it is being intimated to learned counsel for the appellants as well as this Court for the first time only today. Memo is being tendered in the Court.

9. It is open to the appellants to take steps to bring on record legal heirs of the first respondent, but that may not be an impediment for considering and passing orders in this petition, as the demise of first respondent was on 03.11.2017 and it is being brought to the notice of the Court as well as learned counsel for the appellants for the first time only today.

10. As far as, learned counsel for second respondent is concerned, he submits that he is for the local body and he opposes this application. Learned counsel submits that Exhibit Nos.B.2 and



B.3 are original sale deeds and he opposes this application, submitting that it is necessary that they continue to be part of the record.

11. Considering the position that this is a second appeal under Section 100 of the Civil Procedure Code, 1908 [C.P.C. for brevity], which turns only on substantial questions of law [not even question of law] and in the light of the fact that the appellants' counsel has filed certified copies of the sale deeds, Exhibit Nos.B.2 and B.3 before this Court, which shall stand substituted for the original sale deeds, I find no merit in the submission made by learned counsel for the second respondent.

12. In the light of the averments made by the appellants, which have been extracted supra and in the light of the trajectory of this litigation thus far and in the light of the narrative supra, I am convinced that the prayer in this petition deserves to be acceded to.

13. It is made clear that the petitioners shall not use the aforesaid original exhibits, i.e., Exhibit Nos.B.2 and B.3 [sale deeds] for any purpose other than the registration of settlement deed, which has been alluded to supra, without leave of this Court. Besides this, it is made clear that the settlement deed should contain a clause/covenant clearly mentioning the pendency of this second appeal i.e., S.A(MD)No.220 of 2004 in this Court. This application is allowed subject to these conditions. No costs.

14. Considering the nature of the averments, this order shall be issued today and Registry is directed to return original exhibits, i.e., Exhibit Nos.B.2 and B.3 after substituting the same with the certified copies of sale deeds, which have been filed along with this petition, within three working days from today to the learned counsel for the appellants.

sd/-
03/04/2018

/ TRUE COPY /

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

TO
THE DISTRICT MUNSIF, THIRUMANGALAM.

COPY TO
THE SECTION OFFICER, VR SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
+1. C.C. to M/S.PT.S.NARENDRAVASAN Advocate SR.No.59437

ORDER IN
CMP(MD) No.10074 of 2017 IN
SA(MD) No.220 of 2004
Date :03/04/2018