



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

Wednesday, the Fifth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr.Justice N.SATHISH KUMAR

CMP(MD) No.1763 of 2019

IN

SA(MD) No.534 of 2009

1 V.THANGADURAI

2 V.T.RAJESH

... PETITIONERS/APPELLANTS 1 & 2

Vs

1 J.FRANCIS XAVIER

2 A.JEYASEELI

3 K.DEVADOSS JEBARAJ

4 G.KASI VISWANATHAN

5 K.VIMALA

6 R.SAMATHUVAMANI

7 D.MERCY ROSALIND

8 GEORGE JOSEPH

... RESPONDENTS 1-7/RESPONDENTS 1-7

...8th RESPONDENT/3rd APPELLANT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to return the original power of Attorney Deed dated 30.07.1996 marked as Exhibit B1 in O.S.No.664 of 2000 on the file of the I Additional District Munsif Court, Tirunelveli by substituting the original Exhibit B1 with that of a certified copy issued by this Honourable Court and by accepting the undertaking given by the petitioner.

PRAYER IN SA(MD) No.534 of 2009:

To set aside the judgment and decree dated 31.03.2009 in A.S.No.132 of 2004 on the file of I Additional Sub Court, Tirunelveli reversing the judgment and decree dated 12.04.2004 in O.S.No.664 of 2000 on the file of the I Additional District Munsif Court, Tirunelveli allow the appeal.

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.S.CONCIOUS ILANGO, Advocate for the petitioner and of MR.M.P.SENTHIL, Advocate for R1 & R7 abd of Mr.M.PATTURAJAN, Advocate for R2 & R3 and of Mr.S.PALANI VELLAYUTHAM, Advocate for R4 to R6, the court made the following order:-

<https://hcservices.ecourts.gov.in/hcservices/>



This application has been filed to return the original power of attorney dated 30.07.1996, marked as Ex.B.1 in O.S.No.664 of 2000, on the file I Additional District Munsif Court, Tirunelveli, which is the subject matter of this Second Appeal.

WEB COPY

2.It is the main contention of the petitioner that the entire issue pertain to the power of attorney Ex.B.1, wherein it is specifically alleged that the power of attorney was not executed by the executant. Based on that, a criminal prosecution has been lodged against the petitioners. The above case ended in conviction. As against which, a Criminal Appeal in Crl.A.Nos.142 and 148 of 2010, pending on the file of III Additional District and Sessions Judge, Tirunelveli. At this stage, a Criminal Revision Case has also been filed before this Court, in Crl.R.C.Nos.615 and 616 of 2013, challenging the order of the Sessions Court and for allowing the additional evidence. The above revision was dismissed.

3.Thereafter, the same order was re-called in Crl.M.P.[MD] No.7282 of 2019 in Crl.O.P.[MD]No.9598 of 2019, by this Court on the ground that the order of the Appellate Court dated 19.07.2013 has not been brought to the revisional Court. Now, it appears that the Sessions Court has passed an order wherein, the present petitioners are directed to produce the original power of attorney document which is in dispute and also directed P.Ws.2 and 3 in the criminal case to offer their signature at the relevant period of the power of attorney. Therefore, it is the contention of the petitioners that in order to send the document which is said to be forged to the expert, this document is to be returned.

4.Whereas, the learned Counsel appearing for the respondents submits that the appeal is of the year 2009 and Ex.B.1, if returned, there will be a further delay in disposing of the appeal. The present suit is also filed on the basis on the power of attorney and the respondents claim right over certain properties on the ground that the power of attorney is a forged one. Therefore, the purchase by the appellant is not valid in the eye of law. The entire issue revolve around the alleged forgery. Similarly, in the criminal case, the appellant is already convicted. Only in the appellate stage, in order to seek the aid of experts, these documents are to be returned. Since, the petitioners are already convicted, in order to give fair chance to establish his innocence, the sessions Court rightly allowed the application and for sending the power of attorney to the handwriting expert.

5.Therefore, this Court, in order to give fair chance to the accused in the criminal trial, is inclined to return Ex.B.1 to the Court concerned directly. The petitioner is directed to apply for the certified copy and substitute Ex.B.1, power of attorney with the records. After substitution, the Registry is directed to send Ex.B.1 to the III Additional District Judge, Tirunelveli.



within a week. The III Additional District Judge is hereby directed to send Ex.B.1 to the expert as ordered by him and see that the report is received. The moment the report is received, the power of attorney shall be again sent back to this Court.

6. With the above directions, this petition is allowed.

sd/-
05/02/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE I ADDITIONAL SUBORDINATE JUDGE, TIRUNELVELI.
2. THE I ADDITIONAL DISTRICT MUNSIF, TIRUNELVELI.

COPY TO:

1. THE III ADDITIONAL DISTRICT JUDGE, TIRUNELVELI.
2. THE SECTION OFFICER,
VR SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-2350[I] dated 05/02/2020)
+1 CC to M/s.V.SASI KUMAR, Advocate (SR-2424[I] dated 06/02/2020)

ORDER
IN
CMP(MD) No.1763 of 2019
IN
SA(MD) No.534 of 2009
Date :05/02/2020

MR

AE/JC/SAR-IV (24.02.2020) 3P 7C