



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.M.A(MD) .570 of 2020

and C.M.P (MD) .No.5941 of 2020

WEB COPY

Gowri Ammal

... Appellant/Respondent/Plaintiff

Vs.

1.A.Nithiya Vendan

2.C.Raman

3.Muthupetchi

4.Sadasivam Kesavan

... Respondents/Appellants/Defendants

PRAYER : The Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of C.P.C to set aside the order of remand by passing a judgment and decree dated 15.03.2019 made in A.S.No.177 of 2017 on the file of the Sub Judge, Tirumangalam in so far as remitting the suit to the trial court by setting aside the well considered judgment and decree dated 24.04.2017 made in O.S.NO.111 of 2004 on the file of the District Munsif, Tirumangalam.

For Appellant : Mr.A.Saravanan

J U D G M E N T

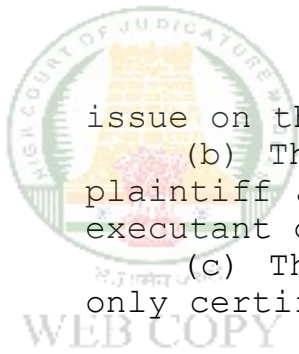
This appeal is filed challenging an order of remand passed by the Sub Judge, Tirumangalam in A.S.No.177 of 2017.

2.The quintessence of the case can be summarized:

2.1The appellant herein has laid a suit in O.S.No.111 of 2004 on the file of the District Munsif, Tirumangalam. for declaration of title and injunction claiming title under Ex.A.1 sale deed dated 19.01.1987. It is the contention of the plaintiff that he has purchased the suit property from one Indira Karunya. The suit property measures 5 cents. According to the defendant, under Ex.B.1 sale deed dated 21.01.1983 she had purchased 2.5 cents from Indira Karunya. The case of the defendant is that the first defendant had purchased the property under ex.B.1 sale deed dated 21.01.1983. This relate to northern half of the suit property. Subsequently Indira Karunya had executed a power deed in favour of the first defendant on the strength of which she had sold the southern half to the third defendant. The trial court had decreed the suit in entirety. The matter was taken in first appeal by the defendants. The defendant contended that Ex.A.1 sale deed is a fabricated and forged document.

2.2 The first appellate court has held that:

(a) inasmuch as the defendants have contended that Ex.A.1 sale deed is a forged one, the trial court ought to have framed a specific



issue on the same.

(b) The burden of proving the genuineness of Ex.A.1 is on the plaintiff and it requires an expert opinion of the signature of the executant of Ex.A.1.

(c) Thirdly, the original of Ex.A.1 has not been produced and only certified copy is produced.

3. Heard the learned counsel for the appellant. This Court considers that the order of remand is in order. In fact instead of drawing adverse inference against the plaintiff for not producing the original of Ex.A.1 it has given the plaintiff an opportunity to establish the case.

4. In conclusion, this Court finds no merit in the appeal and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

Cm/ta

To,

1.The Sub Judge, Tirumangalam.

2.The District Munsif ,Tirumangalam.

+1 CC to Mr.A.Saravanan ,Advocate,in SR.No.23207.

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(MA) CO

AP(05/01/2021) 2P 4C