



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.12294 of 2019
IN
SA No.287 of 2003

SHANMUGA SUNDARAM PILLAI

... PETITIONER/APPELLANT

Vs

SUBRAMANIAN

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to receive the mortgage deed dated 30.09.1944, registered as Doc.No.1895 of 1944 on the file of the Sub Registrar Office, Kazhugumalai as additional evidence in the above Second appeal in SA No.287 of 2003.

Prayer in SA No.287 of 2003:

Second Appeal against the Judgment and decree passed by the Sub Judge, Sankarankovil in A.S.No.40 of 2001 dated 20/12/2001 reversing the judgment and decree dated 22/06/2001 passed by the Additional District Munsif, Sankarankovil in O.S.No.197 of 1986.

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 M.P.SENTHIL, Advocate for the petitioner and of Mr.V.ILLANCHEZIAN, Advocate on behalf of the Respondent, the court made the following order:-

The petition has been filed to receive the mortgage deed, dated 30.09.1994, registered as Document No.1895 of 1944 on the file of the Sub Registrar Office, Kazhugumalai as additional evidence in the second appeal in S.A.No.287 of 2003.

2. The suit in O.S.No.197 of 1986 has been filed for declaration in respect of $\frac{1}{2}$ share in the first item of the suit property to irrigate the property in the second schedule. The plaintiff traces the title to $\frac{1}{2}$ share under Ex.A2. The suit survey Well is mentioned as S.No.501/1. The defendant's contention is that



the purchaser had purchased the suit property from one Chinna Govinda Iyer and his legal heirs. Therefore, he is entitled to $\frac{3}{4}$ th share in the Well and the remaining $\frac{1}{4}$ th share in the Well belong to Michel Ammal. The trial Court has decreed the suit and the first appellate Court has allowed the appeal mainly on the ground that the survey number mentioned in Ex.B29 as S.No.501/8, whereas the vendor of the plaintiff has held the survey number as S.No.501/1.

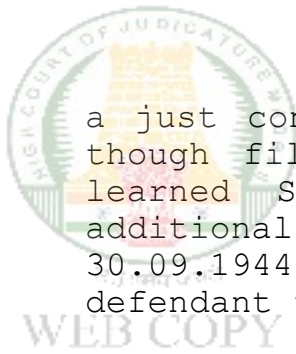
3. Now, it is the contention of the learned counsel for the petitioner that the survey number mentioned in Ex.B29 is a clerical mistake and the correct survey number is S.No.501/1. To prove the above fact, an additional document of the year 1944 came to be secured now, wherein the Vendor Thothathiri Rao himself has mortgaged the suit property mentioning the Survey Number as S.No.501/1. Hence, the application has been filed to adduce additional evidence under Order 41 Rule 27 of the Civil Procedure Code.

4. The application was objected by the respondent on the ground that there is no sufficient reason given by the petitioner and no pleadings in the plaint. In the earlier partition deed, the Well was shown in Survey No.501/8. Therefore, his contention is that the partition deed has been executed in the year 1942, whereas the additional evidence now sought to be filed, is of the year 1944, and the same will not serve any purpose. At any event, now the reason whatsoever adduced for allowing the application is at the appellate stage.

5. I have heard the learned counsel for the petitioner, the learned counsel for the respondent and perused the entire materials available on record.

6. The main dispute with regard to the right of the parties drawing water in 'A' schedule property, the plaintiff claimed $\frac{1}{2}$ share, on the basis of Ex.A2, whereas, the defendant contended that he has $\frac{3}{4}$ th share in the Well and the remaining $\frac{1}{4}$ th share belong to Michel Ammal. The contention of the plaintiff is that he is entitled to $\frac{1}{4}$ th share in the Well and the remaining $\frac{1}{4}$ th share belong to Michel Ammal. It is the contention of the defendant that the Well was situated in Survey No.501/8, as per Ex.B29, whereas the contention of the plaintiff that the Survey No.501/1 was never subdivided and it was the mistake crept in the partition deed and the Well was in Survey No.501/1. Even after partition, the vendor has held the same property under one mortgage deed of the year 1944, which is now sought to be filed as the dispute mainly revolved on the survey number.

7. Though there was a delay in filing the application and the other ingredients under Order 41 Rule 27 of C.P.C., not satisfied by the petitioner, this Court is of the view that the document sought



a just conclusion and there is no bar in receiving such document though filed belatedly. Hence, this petition is ordered and the learned Subordinate Judge, Sankarankovil is directed to take additional evidence with regard to the mortgage deed, dated 30.09.1944, filed by the plaintiff and give an opportunity to the defendant to cross-examine the plaintiff.

8. It is made clear that the additional evidence is only pertaining to the document now sought to be filed and no further evidence is permitted.

9. The learned Subordinate Judge, Sankarankovil shall record the evidence and thereafter send the same to this Court within a period of one week. Both the parties are directed to appear before the learned Subordinate Judge, Sankarankovil, on 24.02.2020, for recording the evidence.

10. The Registry is directed to send the certified copy of the mortgage deed filed along with the petition to the learned Subordinate Judge, Sankarankovil in a sealed cover.

11. Post the matter on 13.03.2020.

sd/-
05/02/2020

/ TRUE COPY /

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

TO

1. THE ADDITIONAL DISTRICT MUNSIF, SANKARANKOVIL.
2. THE SUBORDINATE JUDGE, SANKARANKOVIL.

COPY TO:-

THE REGISTRAR (JUDICIAL)
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S M.P.SENTHIL Advocate SR.No. 2409

ORDER IN
CMP(MD) No.12294 of 2019 IN
SA No.287 of 2003
Date :05/02/2020

AKV

<https://hcservicesrecords.gov.in/Lcservices> 14/02/2020 : 3P/5C