



+BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) Nos.1471 & 1472 of 2021
and
C.M.P. (MD) No.8200 of 2021

Nagammal

.. Petitioner/Petitioner/
Plaintiff - in both CRPs

-vs-

1.Guruvammal
2.Ramasamy
3.Jothiraj

.. Respondents/Respondents/
Defendants - in both CRPs

Prayer :- Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 20.07.2021 in I.A.Nos.3 & 4 of 2021 in O.S.No.115 of 2014 passed by the District Munsif cum Judicial Magistrate, Peraiyur.

For Petitioner : Mr.M.V.Venkatesan
(In both CRPs)
For Respondents : No appearance
(In both CRPs)

COMMON ORDER

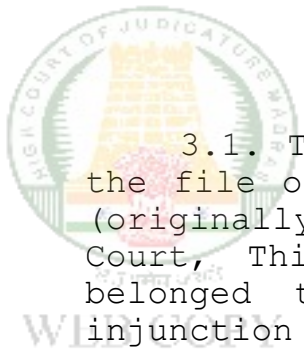
The plaintiff in the suit in O.S.No.115 of 2014 pending on the file of the District Munsif cum Judicial Magistrate, Peraiyur, is the revision petitioner before this Court, challenging the orders dated 20.07.2021 passed in I.A.Nos.3 & 4 of 2021 in O.S.No.115 of 2014.

2. I.A.No.3 of 2021 was filed to reopen the plaintiff's side evidence;

2.1. I.A.No.4 of 2021 was filed to compare the thumb impression found in the Sale Deed dated 19.11.1971 registered as Document No.3967/1971 on the file of the Additional Sub Registrar Office, Madurai, with the Sale Deed dated 21.09.1993 registered as Document No.832/1993 on the file of the Sub Registrar Office, Elumalai.

3. The facts in brief, necessary to dispose of these petitions, are as follows:-

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



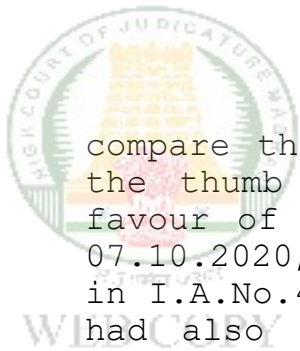
3.1. The plaintiff had filed the suit in O.S.No.115 of 2014 on the file of the District Munsif cum Judicial Magistrate, Peraiyur (originally O.S.No.594 of 2010 on the file of the District Munsif Court, Thirumangalam) for a declaration that the suit property belonged to her absolutely and for a consequential permanent injunction and for costs.

3.2. The plaintiff would submit that the suit property originally belonged to the forefathers of the defendants' family. The 1st defendant's mother-in-law and father-in-law, along with the 1st defendant for and on behalf of defendants 2 and 3, who were then minors, had executed a registered Sale Deed, dated 21.09.1993 on the file of the Sub Registrar Office, Elumalai, in favour of the plaintiff. From the date of the Sale Deed, she has been in peaceful possession and enjoyment of the suit property. The total extent purchased by her was 58 cents including the Kanmoi water channel pathway. The suit property is comprised in S.No.350/5 and the original patta was standing in the name of the 1st defendant's father-in-law as Patta No.881. After the purchase, the plaintiff had mutated the revenue records in her name and the patta number and survey number continued to be the same.

4. While so, the 1st defendant induced defendants 2 and 3 to disturb the plaintiff's peaceful possession and enjoyment of the suit property. On 16.09.2010, the defendants through their henchmen, tried to trespass into the suit property, which was successfully thwarted by the plaintiff. Once again on 17.10.2010, they had visited the suit property. Since the disturbance was a continuous one, the plaintiff had come forward with the above suit.

5. In the written statement filed by defendants 1 and 2, they had contended that the Sale Deed dated 21.09.1993 was a forged document, since the father-in-law of the 1st defendant was not in the habit of affixing his thumb impression and used to sign all the documents. They would contend that on the date of the Sale Deed, the 1st defendant's husband Perumal was alive and that he had died only on 27.09.1993. They would also contend that the document was forged, since the name of the grand mother of defendants 2 and 3 has been mentioned as Subbammal whereas, her name was Subbulakshmi. The defendants would contend that they are in possession and enjoyment of the property.

6. An additional written statement was also filed by defendants 1 and 2 once again reiterating the contents made in the earlier written statement. During the evidence of D.W.1, the defendants had introduced a document dated 19.11.1991, which was a mortgage that was executed in favour of the Ramanathapuram Village Cooperative Agricultural Society by the 1st defendant's father-in-law and mother-in-law and her husband. This document was filed on 07.10.2020. Therefore, the plaintiff had come forward with an application to



compare the thumb impression in the document dated 19.11.1971 with the thumb impression found in the Sale Deed dated 21.09.1993 in favour of the plaintiff. Since the document had surfaced only on 07.10.2020, an application was filed by the plaintiff on 15.12.2020 in I.A.No.4 of 2021. Along with the said application, the plaintiff had also filed I.A.No.3 of 2021 to reopen the plaintiff's side evidence. Both the applications were dismissed by the learned District Munsif cum Judicial Magistrate, Peraiyur, on the ground that the applications for sending the thumb impression for an expert's opinion has taken 11 years after the filing of the suit. Challenging the said orders, the plaintiff is before this Court.

7. The respondents, though served, had not entered appearance either in person or through counsel.

8. Heard the learned counsel for the plaintiff.

9. The only ground on which the applications have been dismissed is on the ground that these applications have been filed 11 years after the filing of the suit.

10. This Court is of the considered view that the learned District Munsif cum Judicial Magistrate, Peraiyur, has overlooked the fact that the said document is not referred to in the first written statement filed by the defendants, nor in the additional written statement and for the first time had surfaced only on 07.10.2020 when D.W.1 (the 2nd defendant) had adduced evidence. Within two months, the impugned applications have been filed. The main defence of the defendants is that the Sale Deed dated 21.09.1993 is a forged document, since the 1st defendant's father-in-law was not in the habit of affixing his thumb impression and was only in the habit of signing and that the thumb impression found in the Sale Deed does not belong to her father-in-law. The document, which has now been marked on the side of the defendants viz., the Sale Deed dated 19.07.1971, contains the left thumb impression of the 1st defendant's father-in-law. Since it is the thumb impression of the 1st defendant's father-in-law and as thumb impressions do not change with time, the learned Judge ought to have allowed the application.

11. The plaintiff seeks to have her title declared on the basis of this disputed Sale Deed. Therefore, it is imperative that the thumb impression found in these two documents be compared with the admitted thumb impression that has been produced by the defendants themselves (viz., the Sale Deed dated 19.07.1971).

12. In the above circumstances, the order passed by the learned District Munsif cum Judicial Magistrate, Peraiyur, in I.A.No.4 of 2021 in O.S.No.115 of 2014 is set aside and C.R.P.(PD) (MD) No.1472 of 2021 is allowed.



13. As regards C.R.P.(PD) (MD) No.1471 of 2021, the same is an application, that is, filed to reopen the evidence on the side of the plaintiff.

14. Learned counsel appearing for the petitioner would submit that he is not pressing the petition, as he can take necessary steps after receipt of the expert's report.

15. In view of the above submission, C.R.P.(PD) (MD) No.1471 of 2021 is dismissed with liberty to the petitioner to file necessary application, if required, to reopen the evidence of the plaintiff.

16. In the result,

(i) C.R.P.(PD) (MD) No.1471 of 2021 is dismissed with liberty to the petitioner to file necessary application, if required, to reopen the evidence of the plaintiff; and

(ii) C.R.P.(PD) (MD) No.1472 of 2021 is allowed setting aside the order dated 20.07.2021 passed by the learned District Munsif cum Judicial Magistrate, Peraiyur in I.A.No.4 of 2021 in O.S.No.115 of 2014. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The District Munsif cum Judicial
Magistrate, Peraiyur.

C.R.P.(PD) (MD) Nos.1471 & 1472 of 2021
06.12.2021

NSN(CO)
KB(30.12.2021) 4P 2C