



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

Tuesday, the Sixteenth day of February Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice N.SATHISH KUMAR

C.M.P.(MD)Nos.11693 of 2017 and 1207 of 2020
in
A.S.(MD)No.204 of 2017

DEVASAHAYAM

... PETITIONER/ APPELLANT
IN BOTH THE PETITIONS

Vs

1 SUBBAMMAL
2 VELMURUGAN
3 MARIAMMAL
4 AZHAGUVALLI

... RESPONDENTS/ RESPONDENTS
IN BOTH THE PETITIONS

PRAYER IN C.M.P.(MD)No.11693 of 2017 in A.S.(MD)No.204 of 2017:

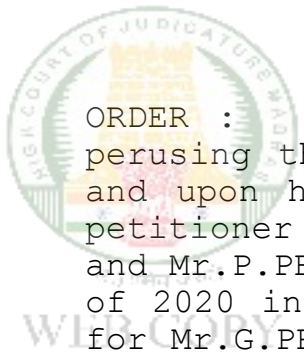
Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to receive the following documents 1) The registered will dated 29/04/2008 executed by Chinnamalaisami, 2) The cancellation deed dated 02/01/2015 in respect of the said Will, 3) Adhar card in respect of Muthulakshmi, 4) Death certificate of Muthulakshmi 5) Death certificate of Chinnamalaisami, 6) The copy of General Power deed executed by Muthulakshmi in favour of Arumugam as additional evidence on the petitioner side and to mark the same as Ex.A4 to Ex.A9.

Prayer in CMP(MD). 1207/ 2020 in A.S.(MD)No.204 of 2017:

To receive the following documents (1) Judgment passed by the learned District Munsif Court, Thoothukudi in O.S.No.244 of 2015 and (2) Decree passed by the learned District Munsif Court, Thoothukudi in O.S.No. 244 of 2015 as additional evidence on the petitioner side and to mark the same as Ex.A.10 and ex.A11 and thus render justice.

PRAYER IN A.S.(MD)No.204 of 2017:

To allow the appeal and set aside the judgment and decree dated 06.09.2017 made in O.S.No.100 of 2015 on the file of 2nd Additional District Court, Thoothukudi, and decree the suit with cost.



ORDER : These petitions coming up for orders on this day, upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr.A.ARUMUGAM, Advocate for the petitioner in C.M.P.(MD)No.11693 of 2017 in A.S.(MD)No.204 of 2017 and Mr.P.PETHU RAJESH, Advocate for the petitioner in CMP(MD)No.1207 of 2020 in A.S.(MD)No.204 of 2017 and of Mr.CHENGIZ KHAN, Advocate for Mr.G.PRABHU RAJADURAI, Advocate for the Respondents 1 and 2 and Respondents 3 and 4 not appeared either in person or by an advocate in both the petitions, the court made the following order:-

The prayer in C.M.P.(MD)No.11693 of 2017 is as follows:

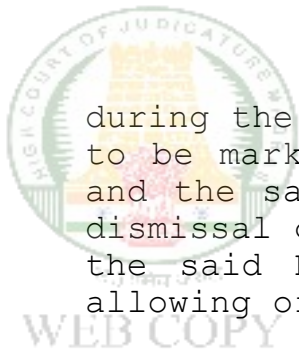
"... to receive the following documents: 1) The registered Will dated 29.04.2008 executed by Chinnamalaisami, 2) The cancellation deed dated 02.01.2015 in respect of the said Will, 3) Adhar card in respect of Muthulakshmi, 4) Death certificate of Muthulakshmi, 5) Death Certificate of Chinnamalaisami, 6) The copy of General Power deed executed by Muthulakshmi in favour of Arumugam as additional evidence on petitioners' side and to mark the same as Ex.A4 to Ex.A9."

2. The prayer in C.M.P.(MD)No.1207 of 2020 is as follows:

"...to receive the following documents: 1) Judgment passed by the learned District Munsif, Thoothukudi in O.S.No.244 of 2015 and 2) Decree passed by the District Munsif, Thoothukudi in O.S.No.244 of 2015 as additional evidence on petitioners' side and to mark the same as Ex.A10 and Ex.A11."

3. The main issue involved in the suit is whether the vendor of the plaintiffs is a legally wedded wife and class-I legal heir of the original owner Chinnamalaisamy. It is the main contention of the plaintiffs that they have purchased the property from the vendor, who is the second wife of the original owner. The defendants disputed the said relationship and took a stand that she is only a servant maid and only in order to grab the property, the power of attorney has been executed. The trial Court accepted the contention of the defendants, dismissed the suit. As against the same the present Appeal suit is filed.

4. At this stage, the aforesaid applications have been filed mainly on the ground that the deceased Chinnamalaisamy has left a original Will. In the original Will itself he has referred the vendor of the plaintiffs as his legally wedded wife. However, the plaintiffs did not have the Original Will at the time of trial and therefore, the Will of the Chinnamalaisami could not be produced



during the course of the trail of the suit and documents, now sought to be marked, were recently came into possession of the plaintiffs and the same were in the custody of one Kalidhas. Only after the dismissal of the suit, when the plaintiffs has poured out his agony, the said Kalidhas handed over the documents. Hence, prayed for allowing of these applications.

5. The learned counsel appearing for the respondents submitted that the aforesaid documents like Adhar Card and Death Certificate, now sought to be marked, are self serving documents and therefore, it cannot be relied in appeal and the plaintiffs have not made out any ground or reason as to why the alleged documents were not produced before the trial Court and hence, the same cannot be relied in appeal. Therefore, prays for dismissal of these applications.

6. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

7. Normally, the reception of additional documents will be allowed only when the applicant satisfied the ingredients of Order XXI Rule 27 of C.P.C. However, when the Court finds that the documents, now sought to be marked, will help the Court to arrive at such a conclusion or otherwise will help the Court to arrive at just decision, in respect of the lis between the parties, the Court can very well use its discretion and allow the additional documents. Now the documents, sought to be marked in the appeal stage, appears to be relevant, particularly, with regard to the status of the parties.

8. In such view of the matter, this Court is of the view that those documents are necessary to be brought on record for proper appreciation of both sides pleadings to render justice.

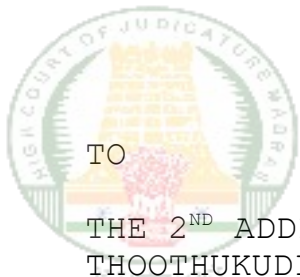
9. Accordingly, these applications are ordered. The learned II Additional District Judge, Thoothukudi, is directed to receive the above documents as additional evidence and record the evidence after giving opportunity to both sides and produce the same before this Court. For such exercise, the parties are directed to appear before the learned II Additional District Judge, Thoothukudi on 08.03.2021 and the entire evidence on both sides, shall be completed on or before 31.03.2021.

10. After receiving the same, Registry is directed to post this Appeal Suit for hearing on 08.04.2021.

sd/-
16/02/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

THE 2ND ADDITIONAL DISTRICT JUDGE,
THOOTHUKUDI.

COPY TO:

THE SECTION OFFICER, VR SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE, SR NO.1186

+1CC TO Mr.P.PETHU RAJESH, ADVOCATE, SR NO.1052

ORDER

IN

C.M.P. (MD) Nos.11693 of 2017
and 1207 of 2020

IN

AS(MD) No.204 of 2017

Date :16/02/2021

VSM

MS/PN/SAR-3/22.02.2021/4P.5C