



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.741 of 2017

and

C.R.P. (MD)Nos.2047 & 2048 of 2021

and

C.M.P. (MD)No. 10935 of 2021

C.M.A. (MD)No.741 of 2017

A.Paramasivan

...Appellant/Petitioner/Plaintiff

Vs.

1.SPIC Electric Power Corporation,
Private Limited Company,
Represented by its Secretary,
Having office at,
16B, 16C whites road,
Chennai.

2.M.Ravindranathan (died)

3.R.Jawahar

...Respondents/Respondents/Defendant

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule (1) (E) of Civil Procedure Code, to call for the records connected to the order, dated 12.06.2017 in I.A.No.927 of 2016 in O.S.No.261 of 2008 on the file of the learned District Munsif Court, Srivaigundam and set aside the same as illegal.

For Appellant : Mr.Robert Chandra Kumar

For R-1 : Mr.M.P.Senthil

For R-3 : No appearance

C.R.P. (MD)Nos.2047 & 2048 of 2021 :

The Secretary,
SPIC Electrical Power Corporation
Private Limited Company,
Functioning at Building
Door No.16B & 16C,
Whites road, Chennai.

...Petitioner/1st Respondent/1st Defendant
in both CRPs.



-VS-

1.Paramasivan

...1st Respondent/Petitioner/Plaintiff
in both CRPs.

M.Ravindranathan (Died)

2.Jawahar

...2nd Respondent/3rd Respondent/3rd Defendant
in both CRPs

PRAYER: Civil Revision filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 16.06.2016 in I.A. Nos.309 & 318 of 2016 in O.S.No.261 of 2008 on the file of the learned District Munsif, Srivaikundam.

In Both C.R.Ps.

For Petitioner : Mr.M.P.Senthil

For Respondents: Mr.Robert Chandra Kumar

O R D E R

C.M.A. (MD)No.741 of 2017 has been preferred by the appellant to set aside the order, dated 12.06.2017 in I.A.No.927 of 2016 in O.S.No.261 of 2008 on the file of the learned District Munsif Court, Srivaigundam.

C.R.P. (MD)Nos.2047 & 2048 of 2021 have filed to set aside the fair and decreetal order, dated 16.06.2016 in I.A.Nos.309 & 318 of 2016 in O.S.No.261 of 2008 on the file of the learned District Munsif, Srivaikundam.

2.The petitioner/plaintiff has filed a petition in I.A.No.927 of 2016 in O.S.No.261 of 2008, under Order 9 Rule 9 of the Civil Procedure Code, to restore the suit which was dismissed for default on 22.06.2016. The said petition was dismissed on 12.06.2017. Against the said dismissal order, the appellant/plaintiff has filed the Civil Miscellaneous Appeal.

3.The suit in O.S.No.261 of 2008 was filed by the appellant/plaintiff for declaration of title and permanent injunction.

4.The 1st respondent herein/1st defendant has filed written statement and contended that he has purchased the property from Power agent of the appellant/plaintiff. The appellant/plaintiff has disputed the power deed and filed a petition in I.A.No.309 of 2016 in O.S.No.261 of 2008 to compare the signature in the power deed which was allowed with Costs and payment of batta the case has been posted on 22.06.2016. Due to non-payment of batta, the suit was



dismissed for default on the same day.

5.For restoring the suit, the appellant/plaintiff has filed a petition in I.A.No.927 of 2016 and the same was dismissed on 12.06.2017.

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6.The suit in O.S.No.261 of 2008 has been dismissed for default on 22.06.2016, on the ground that suit was pending from 2008 and this Court also has issued a circular in ROC.No.984/2015/RGB5, dated 25.02.2016, instructed for speedy disposal. The reasons stated in the restoration petition also not accepted. But, the petition was allowed by the Court and documents to be sent for expert opinion. At this stage, the suit was dismissed for default.

7.But the restoration petition has been filed for the first time within a period of limitation. The suit is also filed for declaration and injunction. The appellant/plaintiff has to prove the alleged power deed was not executed by him. So, one more chance may be given to the appellant/plaintiff to prove his case.

8.So, this Court is inclined to allow the C.M.A.(MD)No.741 of 2017.

9.C.R.P.(MD)Nos.2047 & 2048 of 2021 have filed by the petitioner/^{1st} defendant to set aside the fair and decreetal order, dated 16.06.2016 in I.A.Nos.309 & 318 of 2016 in O.S.No.261 of 2008 on the file of the learned District Munsif, Srivaikundam.

10.I.A.Nos.309 & 318 of 2016 in O.S.No.261 of 2008 have been filed by the revision petitioner/plaintiff to send the power deed, dated 15.09.1997 from the Sub-Registrar Office to the Forensic department for comparison.

11.The main issue in the suit is whether the alleged power deed executed by the petitioner/plaintiff is a genuine or forged one?

12.Therefore, it is necessary to send for the document for getting expert opinion. But, it has to be compared with contemporary document executed at the time related to the execution of alleged power deed.

13.In view of the aforesaid reasons, C.M.A.(MD)No.741 of 2017 is allowed. The learned District Munsif, Srivaikuntam is directed to restore the suit in O.S.No.261 of 2008 on file.

14.C.R.P(MD)Nos.2047 & 2048 of 2021 are disposed of. The petitioner/plaintiff is directed to produce the contemporary document executed at the time of execution of power deed, dated 15.09.1997. The learned District Munsif, Srivaikuntam, is directed to restore the suit on file and dispose the matter, as expeditiously as possible. The appellant/plaintiff fails to produce the



contemporary document, both the I.As are to be dismissed and the learned District Munsif, Srivaikuntam, is directed to proceed the case in the manner known to law. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:

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

1. The District Munsif,
Srivaikuntam.
2. The Record Keeper,
V.R. Section, Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/S.M.P.SENTHIL, Advocate, SR-1425, dated 12/01/2022

+1 CC to M/S.I.PINAYGASH, Advocate SR-1549, dated 12/02/2022

C.M.A. (MD)No.741 of 2017

and

C.R.P. (MD)Nos.2047 & 2048 of 2021

12.01.2022

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