

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
08.02.2022	08.04.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.907 of 2021
and
C.M.P(MD) .No.8520 of 2021

Padma ... Appellant/1st Respondent/Plaintiff

Vs

1.Nagarajan ... 1st Respondent/Appellant/Defendant
2.Kanagasabapathy ... 2nd Respondent/2nd Respondent/
2nd Defendant

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(U) , to set aside the judgment and decree passed by the Sub-ordinate Judge, Ramanathapuram in A.S.No.39 of 2018 dated 17.03.2021 by remanded back to trial Court passed by the District Munsif Court cum Judicial Magistrate, Thiruvadanai in O.S.No.47 of 2010 and 28.03.2017 and allow the Civil Miscellaneous Appeal.

For Appellant : Mrs.Lakshmi Gopinath
for M/s.Polex Legal Solutions

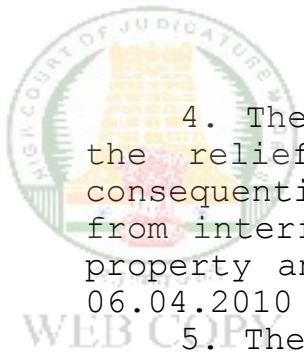
For Respondents : Mr.V.R.Shanmuganathan
for R1
Mr.P.Manikandan for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the judgment and decree passed in A.S.No.39 of 2018 on 17.03.2021 by the Subordinate Judge, Ramanathapuram, remanding the matter back to the District Munsif Court cum Judicial Magistrate, Thiruvadanai.

2. The plaintiff is the appellant and the defendants are the respondents.

3. For the sake of convenience and clarity, the parties are referred to as per their ranking before the trial Court.



4. The plaintiff has filed a suit in O.S.No.47 of 2010 seeking the relief of declaration of title to the suit property and consequential relief of permanent injunction against the defendants from interfering with peaceful possession and enjoyment of the suit property and further, the relief of declaring the sale deed, dated 06.04.2010 as null and void.

5. The plaintiff proceeds on the basis that one Muthuramu Ammal had bequeathed the plaint scheduled properties in favour of the plaintiff by way of a Will, dated 11.09.2001, which is marked as Ex.A1. On the strength of Ex.A1/Will, he has sought the above relief.

6. The defendants filed a written statement and denied the validity and genuinity of the Will. The defendants contended that the suit scheduled properties were allotted to the male legal heirs of Muthuramu Ammal.

7. Before the trial Court, P.W.1 to P.W.3 were examined and Exs.A1 to A6 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Exs.B1 to B4 were marked.

8. On considering both oral and documentary evidence, the trial Court has upheld the contention of the plaintiff that Ex.A1-Will is true and genuine and consequently, granted the relief of declaration of title to the suit properties and permanent injunction as prayed for. Hence, the first defendant has preferred an appeal in A.S.No.39 of 2018 before the Sub Court, Ramanathapuram. Pending appeal, he has filed I.A.No.91 of 2020 under Order 26 Rule 10(A) of the Code of Civil Procedure read with Section 45 of the Indian Evidence Act seeking the opinion of Scientific Expert in respect of thumb impression of the said Muthuramu Ammal found in Ex.A1. Along with affidavit and the petition, he has filed two documents, namely, the sale deed which is alleged to have been executed by the said Muthuramu Ammal along with one Dhanalakshmi vide Document No.388/1989 and the alleged thumb impression of the said Muthuramu Ammal in Document No.985/1993. The plaintiff filed a counter affidavit alleging that the genuineness of Ex.A1-Will was proved in the manner known to law by examination of his attestors, i.e., P.W2 and P.W.3.

9. Before the trial Court, the first defendant has not filed any document for expert opinion and comparison of thumb impression. Copies of the documents produced before the First Appellate Court as sample documents, were not furnished to the plaintiff. By order, dated 17.03.2021, the learned Sub Judge/Appellate Judge, Ramanathapuram, has allowed both Interlocutory Application as well as Appeal and remanded the matter for appointment of Advocate Commissioner by the trial Court to obtain the opinion of the Expert by comparing the disputed signature of Muthuramu Ammal found in Ex.A1-Will with that of the thumb impression of the said Muthuramu Ammal obtained from the Sub-Registrar Office, and receive the same as additional documents by the trial Court. Aggrieved against the said order of remand passed by the lower Appellate Court, the plaintiff has preferred this Civil Miscellaneous Appeal.



10. Heard both sides and perused the materials available on record.

11. The case of the plaintiff rests upon Ex.A1-Will. To prove the Will, he has examined his Attestors, namely, P.W.2 and P.W.3. The trial Court has rendered a finding that Ex.A1-Will is true and genuine and consequently, granted the relief of declaration of title over the property and permanent injunction. On the appeal filed by the first defendant, he has taken out an application enclosing two sample documents as if it is allotted to them, which was bequeathed by the said Muthuramu Ammal. However, without furnishing the copies to the appellant herein in the Interlocutory application and the learned Sub Judge, Ramanathapuram, has allowed the appeal and also interlocutory application filed by the first defendant/first respondent herein. Furthermore, without giving a finding as to whether the two sample documents which were annexed with Interlocutory Application are belonged to the said Muthuramu Ammal, Interlocutory Application cannot be disposed of. This vital factor was not considered by the learned Sub Judge, Ramanathapuram. Besides, for the purpose of sending the documents to expert opinion, the order of remand to send back the matter to the trial Court is not warranted, because, the Appellate Court can retain the file and get an opinion from the Forensic Department and the same can be received in exercise of power under Order 41 Rule 27 C.P.C. The lower Appellate Court has not properly understood the scope of the case as well as the procedure to be followed thereon. Hence, in this view of the matter, the order passed in I.A.No.91 of 2020 dated 17.03.2021 and the judgment and decree passed in A.S.No.39 of 2018 are hereby set aside. The matter is remanded back to the learned Sub Judge, Ramanathapuram, to take A.S.No.39 of 2018 on file and restore I.A.No.91 of 2020. A further direction is issued to furnish the copies of the two sample documents filed by the first defendant in respect of Interlocutory application and get additional counter affidavit in respect of the said documents. Thereupon, the learned Appellate Judge is directed to record the reasoning as to whether two sample documents filed by the first defendant can be construed as sample thumb impression of the said Muthuramu Ammal or not and follow the procedures as contemplated under Order 26 Rule 10A C.P.C and Order 41 Rule 27 C.P.C. The order of remand for the purpose of appointment of the Advocate Commissioner is totally unwarranted. Hence, this Civil Miscellaneous Appeal is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)



To

1.The Sub-ordinate Judge, Ramanathapuram

2.The District Munsif Court cum Judicial Magistrate,
Thiruvadanai

Copy to:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.POLAX LEGAL SOLUTIONS(Lakshmi Gopinathan), Advocate
(SR-17811[F] dated 11/04/2022)

+1 CC to M/s.VR. SHANMUGANATHAN, Advocate (SR-18071[F] dated
12/04/2022)

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MGJ(03.06.2022) 4P 7C