



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

Tuesday, the Twenty Third day of August Two Thousand and Twenty Two

PRESENT

WEB COPY

The Hon`ble Mr.Justice B.PUGALENDHI

CMP(MD) No.7058 of 2022
in
SA(MD)No.17 of 2022

S.RAJA RAJESWARI

... PETITIONER/RESPONDENT NO.1

Vs

1 K.K.SELVAM

AA2 TO 4 ARE BROUGHT ON RECORD AS LRS
DECEASED SOLE APPELLANTS VIDE COURT
ORDER DATED 20/12/2019 MADE IN CMP
(MD).NO.8559,8758/2019 IN SA NO.17 OF
2017

2 PARAMESWARI,

3 K.S.RESHIKA,

4 K.S.JANANI, ...RESPONDENT Nos. 2 TO 4/ APPELLANT Nos.1 TO 4

5 R.AJITHA VINODHKUMARI,

6 K.NARAYANASAMY,

7 N.SADHASIVAM,

8 S.ABINAYA, ... RESPONDENTS/RESPONDENT NOS. 2 TO 5

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to pass an order to return the documents marked by the petitioner before the Trial Court as Ex.A6 and A7 on the file of the Additional Subordinate Judge, Thanjavur in O.S.No.251/2010 dated 31/10/2011 after substituting the certified copy of the Ex.A6 and A7 which is in the custody of this Honourable Court.

PRAYER IN SA(MD)No.17 of 2017:

Pleased to set aside the decree and judgment in A.S.17/2012 dated 29.04.2016 on the file of Ist Additional District and Sessions Judge (P.C.R)Thanjavur, confirming the decree and Judgment in O.S.No.251/2010, dated 31.10.2011 on the file of Additional Subordinate judge, Thanjavur.



ORDER : This petition coming up for orders on this case, on perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.ALAGARSAMY, Advocate for the petitioner and of MR.AKHIL AKBAR ALI, Advocate on behalf of the Respondents, the court made the following order:-

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The petitioner herein is the plaintiff in the suit in O.S.No.251 of 2010. She filed the said suit for partition, claiming 1/4th share in the plaint 'A' 'B' 'C' Schedule Properties. During the trial, a Sale Deed dated 23.12.1989 and Settlement Deed dated 20.03.1991 were marked as Exs.A6 and A7. After hearing the oral and documentary evidence, the trial Court decreed the suit partly, by holding that she is entitled to 1/4th share in the 'A' and 'B' schedule properties, which was confirmed by the First Additional District Judge, Thanjavur in A.S.No.17 of 2012. Aggrieved over the same, the first defendant filed the present second appeal. Pending the second appeal, the first defendant died and his legal heirs were brought on record as appellants in the second appeal.

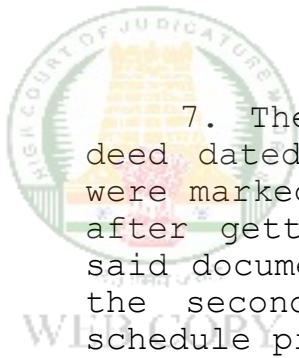
2. It is the grievance of the plaintiff/petitioner herein that since she is facing financial crises, she needs to deposit the Sale deed dated 23.12.1989 and Settlement Deed dated 20.03.1991, which were marked as Exs.A6 and A7 to raise some loan. Therefore, she prays for return of these two documents.

3. The appellants/respondents herein, by filing their counter affidavit, raised certain objections stating that regarding 'A' and 'B' schedule properties, a Will dated 21.10.1999 was executed in favour of the first defendant by his mother. Therefore, the sale deed and settlement deed executed in favour of the plaintiff are sham and nominal documents and the plaintiff/petitioner herein is put to strict proof of the same. Further, these documents are necessary to prove the case of the appellants herein. If the documents are returned to the petitioner, she will alienate the properties, which would cause prejudice to the rights of the appellants herein. Therefore, they pray for not to return the documents.

4. Though the second appeal is pending before this Court, the petitioner herein has the benefit of decree in the suit as well as in the first appeal. Therefore, this Court is of the view that the Sale deed dated 23.12.1989 and Settlement Deed dated 20.03.1991, which were marked as Exs.A6 and A7, are not required for adjudication of the second appeal. Further, the petitioner herein has also enclosed certified copies of those two documents.

5. Accordingly, this petition is allowed.

6. It is seen that the records have not been received from the trial Court.



7. Therefore, the trial Court is directed to return the deed dated 23.12.1989 and Settlement Deed dated 20.03.1991, which were marked as Exs.A6 and A7 in O.S.No.251 of 2010 to the plaintiff, after getting an undertaking affidavit that she will produce the said documents as and when required. It is made clear that pending the second appeal, the petitioner shall not alienate the suit schedule properties.

sd/-
23/08/2022

/ TRUE COPY /

/09/2022

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

TO

- 1 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE (PCR), THANJAVUR.
- 2 THE ADDITIONAL SUBORDINATE JUDGE,
THANJAVUR

+1 CC to M/s.S.ALAGARSAMY, Advocate (SR-8881[I] dated 24/08/2022)

ORDER
IN
CMP (MD) No.7058 of 2022
in
SA (MD) No.17 of 2022
Date :23/08/2022

OGY
PKP/SVR/SAR-2/21.09.2022/3P/4C