



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

Friday, the Second day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice ABDUL QUDDHOSE

CMP(MD) No.9021 and 9022 of 2021
in
SA(MD) No.205 of 2020

1 M.THIRAVIYAM
2 M.K.THIRAVIYAM
3 M.R.THIRAVIYAM
4 D.SELVI
5 M.S.ARCHUNAN

... PETITIONERS/APPELLANTS
IN BOTH CMP'S

Vs

1 N.SUBASH CHANDRA BOSE
2 S.S.S.MOHANLAL
3 SUDHAKAR
4 V.MUTHAIAH

... RESPONDENTS/RESPONDENTS
IN BOTH CMP'S

PRAYER IN CMP(MD) No.9021/2021 :

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to permit the petitioners to let in additional evidence by producing the below mentioned documents in the above appeal in S.A.(MD)No. 205 of 2020 on the file of this Honourable Court.

Prayer in CMP(MD) No.9022/2021 :

To permit the petitioners to raise the grounds, mentioned in the affidavit as additional grounds in S.A.(MD).No. 205 of 2020 on the file of this Honourable Court.

PRAYER IN SA(MD) No.205/2020 :

To set aside the judgment and decree dated 18.12.2019 made in A.S.No.25 of 2016 on the file of the Additional Sub-Court, Tenkasi reversing the judgment and decree dated 02.12.2015 made in O.S.No.194 of 2013 on the file of the Additional District Munsif Court, Tenkasi by allowing this Second Appeal before this Hon'ble Court.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.J.SENTHIL KUMARIAH, Advocate for



the petitioners in both CMP's and of MR.K.NAVANEETHA RAJA, on behalf of the Respondent Nos.1 to 3 and none appeared either in person or by an advocate on behalf of the 4th Respondent, the court made the following order:-

The petitioners have challenged the judgment and decree of the Lower Appellate Court in this Second Appeal. The petitioners are the plaintiffs in the suit. The suit was filed for declaration and permanent injunction and the same was decreed in favour of the plaintiffs by the Trial Court. However, the same was reversed by the Lower Appellate Court, which is the subject matter of challenge in this Second Appeal.

2. The petitioners contend that based on a power of attorney, a sale deed was executed which was relied upon by the first respondent before the Trial Court as seen from the written statement. According to the petitioners, the power of attorney is dated 03.01.1994 and the principal in the said power of attorney died on 26.02.1999. Hence, according to the petitioners, the sale deed dated 25.01.2002 relied upon by the respondents is non est in the eye of law, since the principal died on 26.02.1999 itself even prior to the execution of the sale deed in favour of the first respondent's father dated 25.01.2002.

3. In such circumstances, the petitioners have filed the death certificate of Muthuvel Pillai, the principal under the power of attorney dated 03.01.1994 to show that when the sale deed dated 25.01.2002 was executed in favour of the first respondent's father, the principal was not alive. The reason given by the petitioners for not filing the same before the Lower Appellate Court as found in the affidavits filed in support of these applications is also satisfactory.

4. Counter affidavit has also not been filed in these applications till date despite this Court having granted sufficient opportunity for the respondents earlier to file the same. The learned counsel for the respondents has also not raised any serious objection for allowing these applications.

5. C.M.P.(MD).No.9021 of 2021 has been filed under Order 41 Rule 27 of CPC to the permit the petitioners to let in additional evidence by producing the above mentioned documents and C.M.P.(MD). No.9022 of 2021 has been filed to permit the petitioners to raise additional grounds based on the averments contained in the affidavits filed in support of these applications.

6. This Court is satisfied with the reasons contained in both the affidavits for granting the relief sought for by the petitioners in these applications. Accordingly, these Civil Miscellaneous Petitions are allowed as prayed for. The documents filed along with

<https://www.mca.gov.in> No.9021 of 2021, namely,



CMP(MD)



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a) Identity Card for small farmers issued by the Agriculture Development Officer dated 08.03.1994 and
b) Death certificate of A.Muthuvel Pillai dated 26.02.1999
are taken on record as additional evidence and are marked as exhibits A15 and A16 respectively in this Second Appeal.

7. Post the Second Appeal for arguments finally on 19.06.2023. In the meanwhile, both the counsels are directed to file their respective written submissions without fail.

sd/-

02/06/2023

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/06/2023

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

LM

TO

1 THE ADDITIONAL SUBORDINATE JUDGE, TENKASI.

2 THE ADDITIONAL DISTRICT MUNSIF, TENKASI.

COPY TO

1 THE SECTION OFFICER, E.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

2 THE SECTION OFFICER, JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2 CC to M/s.J.SENTHIL KUMARAIAH, Advocate (SR-7966[I], SR-7967[I]
dated 02/06/2023)

ORDER

IN

CMP(MD) No.9021 and 9022 of 2021
in

SA(MD) No.205 of 2020

Date :02/06/2023

RS/SSS/SAR-(06.06.2023) 3P 7C