



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-09-2025

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CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HONOURABLE MR JUSTICE C. SARAVANAN

OSA Nos. 284 to 286 of 2025

and

CMP Nos. 21394, 21398, 21400 & 21450 of 2025

1.M.G.Riaz Khan
2.M.G.Nabisa Banu
3.M.G.Syed Abuthahir

Appellant(s) in All OSAs

Vs

1.MMTC Limited
Chennai House,
No.7, Esplanade,
Chennai 600 108.

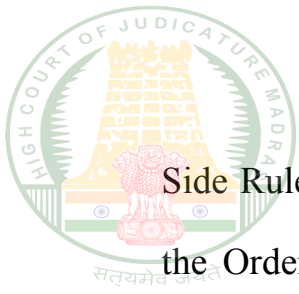
2.S.Mohammed Gani

Respondent(s) in All OSAs

OSA No. 284 of 2025

PRAYER

Original Side Appeal has been filed under Order XXXVI Rule 1 of the Original



Side Rules, 1994 and Clause 15 of Letters Patent of 1865, praying to set aside the Order dated 01.08.2025 in Application No.5645 of 2024 against order in EP.No.83 of 2002 in CS.No.777 of 1995 and to allow the appeal.

OSA No. 285 of 2025

PRAYER

Original Side Appeal has been filed under Order XXXVI Rule 1 of the Original Side Rules, 1994 and Clause 15 of Letters Patent of 1865, praying to set aside the Order dated 01.08.2025 in Application No.5644 of 2024 against order EA No.6045 of 2011 in EP.No.83 of 2002 in CS.No.777 of 1995 and to allow the appeal.

OSA No. 286 of 2025

PRAYER

Original Side Appeal has been filed under Order XXXVI Rule 1 of the Original Side Rules, 1994 and Clause 15 of Letters Patent of 1865, praying to set aside the Order dated 01.08.2025 in Application No.5646 of 2024 against order in EP.No.83 of 2002 in CS.No.777 of 1995 and to allow the appeal.

For Appellant(s): Mr.M.Balachandar
In All OSAs

For Respondent(s): Mr.J.Srinivasan
For M/s.Rugan and Arya
In All OSAs



JUDGMENT

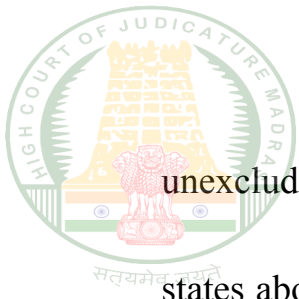
(Judgment was delivered by S.M.Subramaniam J.)

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The Original Side Appeals are preferred against the common order dated 01.08.2025 passed in Application Nos.5644 to 5646 of 2024 in E.P.No.83 of 2022 in C.S.No.777 of 1995.

2. Pertinently, a suit was filed in the year 1995 and a decree was passed in the year 20.07.2001. The Original Side Appeal in O.S.A.No.375 of 2001 was dismissed on 13.07.2009 and the subsequent Special Leave to Appeal in S.L.P.(Civil) No.20570 of 2009 was also dismissed on 26.10.2009. Thus, the judgment and decree passed by the Trial Court became final. Execution proceedings were initiated in the year 2002.

3. An application under Section 47 of the Civil Procedure Code had been instituted in Application No.358 of 2008 to dismiss the Execution Proceedings. The 2nd respondent pleaded in the petition that the mortgage was invalid and the decree holder committed fraud and obtained the decree. Thus, the decree is



unexcludable. Curiously, neither the counter nor the Section 47 application

states about the Hiba and the parties have successfully prolonged the matter till

2011. Subsequently, the 2nd defendant in the application before the Master

Mrs.A.L.Hameedha Beevi (deceased) brought to the notice of the Execution

Court about the Hiba, which is in their favour.

3. The learned Master in his order dated 11.09.2024 has made a finding regarding the Deed of Hiba in paragraph 15, 16 and 17, which reads as under:

“15. The Deed of Hiba is marked as Ex.P1 and it contains 7 sheets. Except sheet 1 and sheet 7 (i.e) last sheet, no date is mentioned at anywhere. Moreover the donor, donee and the witnesses who have signed, did not mention the date at anywhere. Except the first sheet which is a stamp paper of 20 rupees, all other sheets are white sheets. In the last page the counsel who is said to have drafted this deed of Hiba has mentioned the date as 09.04.23. Similarly, in the first page, it is stated that “This DEED of HIBA is made at Madras on this 9th day of April 1993”.



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Except these two places nowhere in the deed the date is mentioned. It is the case of the applicant that this deed was executed on 09.04.1993. But the first page/sheet of Rs.20 stamp paper bears the date 26.01.1993. The Hiba deed was said to have been executed on a stamp paper which was purchased nearly 3 months back.

16. No evidence has been let to show when and where the stamp paper was purchased and when and where the deed was drafted. No witness is examined to prove the execution of the deed and the contention of the deed. Further when a Gift deed was executed by a mother in favour of her children and that too was drafted by a learned advocate and attested by a notary why fresh stamp papers or some stamp papers as on date was not purchased, creates a suspicion on the execution of the said Hiba deed. The stamp paper bears the date 26.01.1993. The said deed was said to be executed on 09.04.1993. It has not been established why on that date a fresh stamp paper as on date was not purchased and the Hiba deed was executed on a stamp paper containing earlier date is



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not clarified or answered by the applicant side.

17. If the Deed was executed on a particular date it would have been or could have been drafted in a Stamp paper bearing the same date. Further no dates are mentioned at anywhere else except the stamp papers which creates strong suspicion on the document. No oral evidence or supportive evidence has been let to prove the execution of this Deed. The applicants have failed to prove the execution of the said Hiba deed. Further the revenue records were mutated only after this application. Though the possession is with the applicants it is not as a consequence of execution of the Hiba deed, since the applicants are the legal heirs of the 2nd Judgment debtor. In all aspects, the applicants have failed to establish and prove their case.”

4. The order of the Master Court was challenged and the learned Single Judge, in the impugned common order reiterated the findings of the Master. The Master had given conclusive and irrefutable reason for rejection of the Xerox copy of the Hiba marked as Ex.P1. The Master had dealt it extensively. Quite



apart from the witnesses and the notary and scribe not having been examined,

he had also raised suspicion about the genuinity of the document and had noted

that except for the first sheet which was in stamp paper of twenty rupees, all

other sheets were white sheets. The date had been typed in the first page and

thereafter mentioned in writing only by the advocate and by notary and by none

else.

5. The learned Single Judge further made a finding that the stamp paper

had been purchased on 26.01.1993, but the Deed was executed on 09.04.1993.

Even though it was drafted by an Advocate and undersigned by a notary, no

explanation has been made as to why the stamp papers of proximate date has

not been used.

6. Under those circumstances, the learned Master came to a conclusion

that the appellants have failed to prove the execution of Hiba. The concurrent

findings of the learned Master and the learned Single Judge of this Court are

irrefutable, candid, convincing and require no further interference.



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Consequently the common order dated 01.08.2025 passed in Application Nos.5644 to 5646 of 2024 in E.P.No.83 of 2022 in C.S.No.777 of 1995, is confirmed and the Original Side Appeals are dismissed. The connected Miscellaneous Petitions are closed. There shall be no order as to costs.

(S.M.SUBRAMANIAM J.)(C.SARAVANAN J.)

02-09-2025

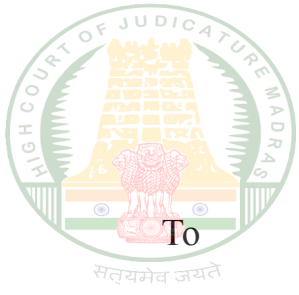
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To
MMTC Limited
Chennai House, No.7, Esplanade
Chennai 600 108



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AND
C.SARAVANAN J.

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