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OSA.No.253 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2025

PRONOUNCED ON : 24.03.2025

CORAM

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH
and
THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

Original Side Appeal No.253 of 2024
and CMP No.29358 of 2024

Mrs.Shareen Premanayagam

... Appellant

-Versus-

1. Ishaan Pejavar Rao
2. Nandan Pejavar Rao

... Respondents

Original Side Appeals filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent Act, praying to set aside the impugned order dated 28.10.2024 passed in A.No.4382 of 2024 in C.S.No.195 of 2024 on the file of the Hon'ble Madras High Court.

For Appellant : Mr.S.Sudarshan

For Respondents : Mr.S.R.Raghunathan



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J U D G M E N T

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The respondent before the learned Single Judge is the appellant herein.

The respondents herein are the petitioners before the learned Single Judge.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the learned Single Judge.

3. The brief facts which are necessary for disposal of this appeal is that, the petitioners filed a suit directing the defendant to deliver the original documents mentioned in the Annexure to the plaint. In the said suit, an Interlocutory Application was also filed seeking an interim relief of directing the respondent/defendant to deposit the original deeds before the Registrar General, till the disposal of the suit. It is the contention of the petitioners that the petition mentioned documents were in the custody of their grandmother late.Malathi Sripathi Rao. However, when they have checked for the originals after her demise, they were found missing. They would further submit that, they were under the impression that those documents were lost. But, when the respondent filed a probate OP in OP No.234 of 2022, they



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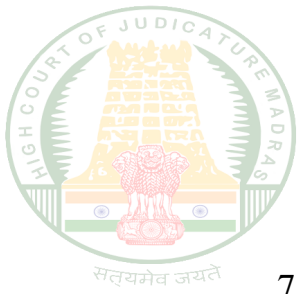
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came to know that those documents are with the respondent. They would further submit that the respondent also obtained a Power of Attorney from late.Malathi Sripathi Rao illegally and has also fabricated some documents. It is in this background, contended that, if the petition mentioned original documents are with the respondent, it would prejudice the ultimate disposal of the suit; hence, prayed to deposit those documents before the Registrar General as an interim measure.

4. Admittedly, the respondent was not given opportunity to file counter statement before the learned Single Judge.

5. The learned Single Judge vide order dated 28.10.2024 directed the respondent to deposit the original document before the Registrar General. While directing, the learned Single Judge observed that the respondent has admitted the custody of the original documents with her. Aggrieved with the said order, the respondent is before this Court.

6. Heard Mr.S.Sudarshan, learned counsel appearing for the appellant and Mr.S.R.Raghunathan, learned counsel for the respondents.



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7. The learned counsel appearing for the appellant/respondent would vehemently contend that the petition mentioned documents are not at all with her, and that those documents are with the financiers, and that even in the written statement, they have categorically referred to the said factum. Accordingly, they would contend that the findings rendered by the learned Single Judge that the respondent has admitted the custody of the original deeds is contrary to the pleadings. He would further contend that the appellant/respondent was not provided with an opportunity to file counter statement and thereby, her right of defence was curtailed. Hence, prayed to allow this appeal.

8. Per contra, the learned counsel for the respondents/petitioners would invite the attention of this Court about the contradicting and prevaricating statements of the appellant/respondent at every stage qua in O.P.No.234 of 2022, and in a written statements of O.S.No.91 of 2023 and in C.S.No.195 of 2024. On the strength of the above contradictions, the learned counsel for the petitioners would contend that those contradictions demonstrate the falsity of the respondent case. Thus, the learned counsel would submit that there are no grounds to interfere with the order of the learned Single Judge.



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9. We have given our anxious consideration to either side submissions.

10. It is an admitted fact that the respondent was not given opportunity to file a counter statement before the learned Single Judge.

11. It is the specific contention of the appellant/respondent that the original document is not at all with her. For the limited purpose of disposing the application, we do not want to venture into the alleged contradicting statements of the respondent projected by the petitioner, as the same would affect the ultimate disposal of the main suit, where the prayer is similar to that of the interim prayer sought in this application. However, the learned counsel for the respondents would contend that she never admitted at any point of time about the custody of the document. As a matter of fact, she had pleaded that those documents are with the financiers. Even the contradictions projected by the petitioner would only refer the respondent's pleading that the documents are with the financiers.

12. At this juncture, it is appropriate to refer the order of this Court dated 03.01.2025, wherein this Court directed the appellant/respondent to file



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an affidavit disclosing the reason as to why the document could not be deposited before the Registry of this Court. In compliance thereof, the respondent filed an affidavit on 03.02.2025, wherein she had referred that, the document was with the financier viz., one Palani Kumar. However, considering the interest of both the parties, this Court, vide order dated 03.02.2025 directed the appellant/respondent to file an affidavit that after the demise of late.Malathi Sripathi Rao, the power of attorney executed by her dated 27.12.2017 was not put in use in any manner, and the appellant/respondent was also directed to deposit the original power of attorney before the Registrar General. In compliance thereof, the original power of attorney dated 27.12.2017 was deposited before the Registrar General on 07.02.2025.

13. Coming back to the custody of the document, on reading the Written statement filed in OS.No.91 of 2023 in para 6, there is a reference about the financier without referring his name. In order to ensure clarity and to know the name of the financier, an affidavit was directed to be filed by the respondent. The learned counsel for the appellant/respondent would submit that the financier is one Mr.L.M.Murugesan with whom the sale agreement



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was executed on 28.07.2021, and in the affidavit dated 25.02.2025, he has also named on Mr.Palani Kumar as the financier with whom the original was found, when the police enquired him on the complaint of one Mr.Ramesh. Therefore, according to the submission of the learned counsel for the appellant/respondent, the word “financier” referred to in paragraph 6 of the written statement in O.S.No.91 of 2023 would refer Mr.L.M.Murugesan and Mr.Palani Kumar.

14. In view of the above detailed discussion, what emerges is, the respondent reiterated that the petition mentioned documents are not in her custody, but on the other hand, she refers that the same may be in the custody of the financiers qua Mr.L.M.Murugesan and Mr.Palani Kumar. Though the learned counsel for the petitioners would strongly object such contention, we are of the firm view that unless a full fledged trial is undertaken after impleading the alleged financiers, it would be improper for us to make any decision based upon the affidavit and qualitative pleadings. Besides, we also find infirmity in the order of the learned Single Judge, as it contradicts factually on the finding regarding admission of the defendant about the custody of the documents. It is in this background, we deem it appropriate to



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remit back the matter before the learned Single Judge, after setting aside the impugned order, with a request to dispose of the application afresh, after affording an opportunity to the respondent herein. We also deem it appropriate to give liberty to the petitioners to implead the alleged financiers in the suit, if they advised, so as to adjudicate the issue in a comprehensive manner.

15. In the result, the OSA is allowed by remitting this matter before the learned Single Judge by setting aside the impugned order for fresh disposal as indicated hereinabove. There shall be no order as to costs. Consequently, connected CMP is also closed.

(Dr.ANITA SUMANTH, J.) (C.KUMARAPPAN, J.)
24.03.2025

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Index : Yes/No

Neutral Citation : Yes/No

Speaking order/Non speaking order

To

The Section Officer,
Original Side,
High Court of Madras.



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Dr.ANITA SUMANTH, J.
and
C.KUMARAPPAN, J.

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Pre-Delivery Judgment in
Original Side Appeal No.253 of 2024
and CMP No.29358 of 2024

24.03.2025