



C.M.AMD) No.991 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.03.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

C.M.A(MD)No.991 of 2018

Rajakumari

... Appellant/Petitioner/
Respondent

-Vs-

Vijay Sugumaran

...Respondent/
Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the fair and decretal order dated 06.07.2018 in I.A.No. 90 of 2015 in H.M.O.P.No.466 of 2014 by the learned Judge, Family Court, Madurai.

For Appellant : Mr.R.Suriyanarayanan
For Respondent : Mr.R.Ramasamy



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JUDGMENT

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

This Civil Miscellaneous Appeal is directed against the order of dismissal passed by the Family Court, Madurai, in I.A.No.90 of 2015 filed to set aside the ex-parte order daed 30.09.2014 passed in H.M.O.P.No.466 of 2014.

2.The short point involved in this case is whether notice and summons in the proceedings duly served on the respondent/petitioner before passing the ex-parte order.

3.The Court below, after examining the petitioner as P.W.1 and the respondent as R.W.1 and on examining of Ex.P.1 to Ex.P.4, Ex.R.1 to Ex.R.3 and Ex.C.1 to Ex.C.3, had come to the conclusion that the petitioner has received the summons and therefore, the reasons stated by the petitioner in her non-appearance on 01.09.2014 is not sufficient and acceptable one.

4.The learned counsel appearing for the appellant would submit that the Court below had failed properly appreciated the documentary evidence placed

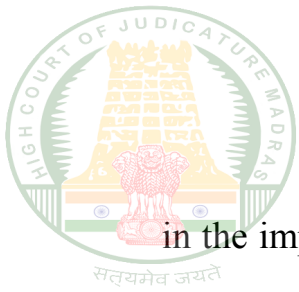


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before him for comparison. Admittedly, the signature of the petitioner is not the signature found in the notice. Despite that the trial Court believing the oral evidence of the R.W.1 to R.W.3 had dismissed the application to set aside the ex-parte order. The learned counsel for the appellant would specifically contend that with an intention, the respondent has shown his own address as the address of his wife and manage to create record as if notice was duly served on the petitioner to get ex-parte order of divorce. It is the case of fraud committed on the Court which requires a serious action. Unfortunately, the Court below had not appreciated the evidence placed before it and had wrongly held that the signature found in Ex.R. 3-sale deed tally with the signature of the petitioner found in the admitted document.

5.The learned counsel for the appellant drew the attention of this Court that Ex.R.3 is the photocopy of the Marriage Certificate and not a sale deed as narrated by the Court below in the impugned order.

6.To verify the above document, this Court call for records and found that the submission made by the learned counsel appearing for the appellant is correct. Ex.R.3 is the photocopy of the Marriage Registration Certificate. There is no sale deed marked as either on the petitioner side or on the respondent side. However,



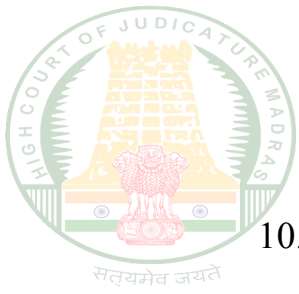
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in the impugned order, the Court below has referred the above document is not in existence.

7.To ascertain whether there is any other document available with the respondent to substantiate his claim that the signature found in the summons is that of the petitioner, this Court gave an opportunity to the learned counsel for the respondent to produce the sale deed mentioned in the impugned order as Ex.R.3. This Court, for the said purpose, adjourned the matter from 28.02.2025 to 05.03.2025.

8.Today when the matter called, the learned counsel for the respondent produced the copy of the sale deed dated 21.11.2005 in which as purchaser the petitioner had signed as Rajakumar Sugumaran, which tallies with the signatures found in the summons.

9.The learned counsel for the respondent also explained that in the earlier round of litigation, High Court remandeded the matter back to the trial Court to mark the sale deed for comparison and decide. Accordingly, the copy of the sale deed was marked as Ex.R.3 and the trial Court only on verification the sale deed dismissed the I.A holding the petitioner contention is not correct.



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10.This Court on verification of records found that the submission of the learned counsel for the respondent is correct. Due to inadvertence, the trial Court has not indexed the said exhibit properly. After remand by the High Court, the trial Court has appreciated the sale deed executed in favour of the petitioner marked it as Ex.R3. On comparison of the admitted signature in the sale deed Ex.R.3, with the signature found in summons and in the light of the evidence given by the Post Man and the Process Server has concluded that the respondent in H.M.O.P.No.466 of 2014 (ie) the petitioner in I.A.No.90 of 2015 had received the summon, however remained ex-parte.

11.This Court, therefore, for the reasons stated above, dismissed the Civil Miscellaneous Appeal. No order as to costs.

[G.J., J.] & [R.P., J.]

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NCC : Yes / No
Index : Yes / No
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DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

Ns

To

1.The learned Judge,
Family Court,
Madurai.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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