

IN THE COURT OF SUBORDINATE JUDGE, AT MADURANTAKAM

Present: Tmt.A.Saridha, M.L,

Civil Judge (Senior Division),

Madurantakam.

Friday, the 13th day of August 2021

IA.No.2/2020

in

OS.No.2/2015

CNR.No.TNKP0B-000022/2015

1.Pakkirisamy (died)

2.Amsa,

3.Muthulakshmi

4.Lalitha

5.Aravamudhu

...Petitioners/ Defendants

/Vs/

1.Saroja

2.Muthukumar

...Respondents/Plaintiffs

This Petition coming before this court for final hearing on 10.08.2021 in the presence of Thiru.S.Subramanian Counsel for Petitioners and Thiru.G.S.Sureshababu Counsel for Respondents, having heard the arguments submitted on behalf of both sides, having perused the case records and having stood over the same till date this court delivers the following.

ORDER

The petitioners/ Defendants have filed an application under order 8 rule 3(a) of CPC

to receive following the document

- (1). 10.02.1953 – The certified copy of the sale deed executed by Rajammal in favour of Aravamuthu Naidu.
- (2). 20.10.1954 – The certified copy of the sale deed executed by Kannaia Naidu, Chakkarabani Naidu in favour of Rajammal.
- (3). 16.06.2005 – The original settlement deed in favour of 5th defendant.
- (4). 21.10.1979 – The original Will Rajammal in favour of Pakkirigounder.

2. According to the petitioner, the documents which are sought to be marked are very vital documents and the same has been mixed up with other house records and hence he could not file the same at an earlier time. Hence, this petition. On the other hand, the respondent has denied the all the allegations and the documents detailed in the petition hereunder in settlement deed dated 16.06.2005 executed by Bakkirisamy Gounder who is the 1st defendant in favour of the 5th defendant in that settlement deed there is no any recital that the property acquired by the father of 5th defendant by way of Will which is executed by mother of 1st defendant. Hence, that the Will produced by the respondent is a fabricated one which is created by the defendants. Hence, it cannot be received and further that the settlement deed dated 16.06.2005 executed by Bakkirisamy in favour of 5th defendant is not maintainable. The 1st defendant Bakkirisamy has no individual right or title over the suit properties. Hence, the settlement deed executed by 1st defendant Bakkirisamy in favour of 5th defendant is not binding upon the plaintiffs. Hence, the settlement deed is not valid in law. Further, the documents filed by the petitioner's sale deed dated 27.10.1954 and the sale deed dated 10.02.1953 acquired by Rajambal who is the grandmother of 5th

defendant are no way connected with the suit properties. Hence, pray to dismiss the application.

3. Point for consideration:

Whether this application is to be allowed?

4. Heard. Record Perused. This application is filed seeking permission to receive as their side documents. The respondent has objected to receiving additional documents stating that the alleged Will is fabricated and created document and also 1st defendant had no individual right or title over the suit property to execute a settlement deed. Hence, the alleged document could not be received as additional evidence. All the above objections related to the merits of the case which would be enlightened at the time of trial. Mere receiving of the document does not mean that marking or admitting the documents by the court. Still, the petitioner is having the burden to establish the relevancy & admissibility of the document at the time of entering into the witness box. Therefore, the respondent has the right to raise his objection in respect of relevancy and admissibility of documents, if the petitioner is going to mark as their side exhibits.

5. The Hon'ble supreme court held in Bibin shanthi lal- Panchal - vs- Gujarath that.

" Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds

at the final stage that the objection so raised is sustainable the judge or magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course".

6. Therefore, considering the above facts and circumstance of the case, the petitioner is permitted to produce the documents as per the petition and received subject to proof and relevancy and admissibility of the documents.

In the result, Petition is allowed no cost.

Dictated to the steno-typist, typed by her, corrected and pronounced by me in the open court on this the 13th day of August 2021.

Sd/-A.Saridha.,
Subordinate Judge,
Madurantakam.

Both side Witnesses & Exhibits: NIL

Sd/-A.Saridha.,
Subordinate Judge,
Madurantakam.