

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V. Devapriya, B.Sc.,M.L.,
District Munsif, Madurantakam

Tuesday, the 8th day of November, 2022

I.A.No. 5/2022 and I.A.No.6/2022

in

O.S. No. 165/2017

Pradeepkumar

...Petitioner/Plaintiff

-vs-

1. Devadoss @ Dhavedhu (died)

2. Devasagayam

...Respondents/Defendants

This petition coming up before me on 19.10.2022 for final hearing in the presence of, Thiru.N.Ganapathi, counsel for the Petitioner/Plaintiff and Thiru.R.E.Charles, counsel for Respondents/ Defendants and after hearing the arguments of both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

COMMON ORDER

I.A.No.5/2022

This petition has been filed by the Petitioner/Plaintiff under order XVIII Rule 17 of Code of Civil Procedure to recall of the PW-1 and to mark the documents.

I.A.No.6/2022

This petition has been filed by the Petitioner/Plaintiff under order VII Rule 14 (3) of Code of Civil Procedure to receive the petition mentioned documents and to

mark the same on the side of the Petitioner/Plaintiff.

2.The averments stated in the petition in brief:

The Petitioner/Plaintiff had filed the above suit for permanent injunction and it is in the stage of further PWs. The Petition mentioned documents are very vital to prove the Petitioner/Plaintiff's case. The Documents are mixed up with other old records, and therefore the Petitioner/Plaintiff could not file the same earlier. The Petitioner/Plaintiff was examined as PW-1 in the above case and since he had produced the petition mentioned documents, it is necessary to receive the petition mentioned documents and mark the same by recalling the PW-1 in the above case. Hence these petitions.

3. The averments stated in the Counter filed by the Respondent/Defendant in brief:

These petitions are not maintainable under law and on facts. The documents 1 to 3 are unregistered document and there are overwriting and material corrections in the document. The documents are not properly attested and executed. The documents 4 and 5 are unregistered and fabricated documents. One of the attester in the document Nos. 4 and 5, one Shanmugam is the Advocate Clerk. The signature of 2nd Defendant is totally different and it is fabricated one. The documents 6 to 11 has no evidentiary value. The patta in favour of the Petitioner/Plaintiff is not legally valid and it was issued without due enquiry. The documents 7 to 9, 11 and 13 are self serving documents and the

Petitioner/Plaintiff cannot develop his case through such documents. The Document No.12 is no way connected to the suit. The Petitioner/Plaintiff had filed these petitions along with documents that are inadmissible in evidence. Hence these petitions are liable to be dismissed with costs.

4. The point for determination is whether these petitions are to be allowed or not?

5. No Exhibits marked and no witnesses were examined on both sides

6. Heard both sides and perused the records.

7. The Petitioner/Plaintiff had filed these petitions to recall of the PW-1 and to receive the petition mentioned documents as evidence on his side. The Respondents/Defendants had resisted the petition on the ground that, the documents are fabricated and there are material corrections and the documents are unregistered and not connected to the suit property. The documents No.1 alleged to be the partition deed was alleged to be executed by Doss and others. But in document No.1, there are material corrections with regard to the survey number and the extent of properties. There are no signature of the other sharers in the alleged partition deed and it is not sufficiently stamped and not registered. The document No.2 was mentioned as Consent Deed executed by 2nd Defendant but the recitals in the document No.2 are in the form of Sale deed and there is passing of consideration. But the said document was not registered and not sufficiently stamped. The document No.3 alleged to be Partition Deed was also not

registered and not sufficiently stamped. The schedule of property in document No.1 to 3 is also not properly mentioned.

8. The learned counsel for Respondents/Defendants had filed the judgment of Hon'ble High Court of Bombay in the case of *Hemendra Rasiklal Ghia, etc., vs Subodh Mody, etc., [2008 (5) CTC 577]*, wherein it was held that, the objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit. The another judgment of the Hon'ble High Court, Madras, relied upon by the learned counsel for Respondents/ Defendants in the case of, *Navaneethakrishnan and others vs Dharadevi and others [2022 (3) MWN (Civil) 209]*, the Hon'ble High Court had rejected the sale agreement on the ground that there are material alternation in the same. Therefore this court comes to the conclusion that the document No.1 to 3 are not admissible in evidence.

9. The learned counsel for the Petitioner/Plaintiff had relied upon the judgment of the Hon'ble High Court of Madras in the case of *Natarajan vs Deivanai and others, CRP (PD) No. 2614 of 2015 dated 23.11.2020*, wherein it was held that, the court can admit a document in evidence even if such document is unstamped or insufficiently stamped, after collecting penalty and the question of registration can be decided at the time of final judgment. In the present case the document Nos.1 to 3 not only suffer from

insufficient stamp duty and unregistration, but there are material alterations in those documents and the signature of the parties to the document are missing and the deeds does not contain the proper recitals. Hence the judgment relied upon by the learned counsel for the Petitioner/ Plaintiff is of no assistance to him.

10. The document Nos. 4 and 5 are the Consent Deeds executed by the 2nd Defendant and one Doss. The document Nos. 6 and 7 are obtained through on line and documents 8 to 11 and 13 are the original documents. The Defendants had not stated any specific objections with regard to those documents and there is no impediment in receiving those documents. The document No.12 is the xerox copy of the plaint filed in O.S.No.8/2010 on the file of the Hon'ble Sub Court, Madurantakam and therefore it cannot be received in evidence. Hence for the foregoing reasons, this court is inclined to allow the petition to receive the documents, partly in respect of document Nos. 4 to 11 and 13 alone, on costs.

11. In order to mark the above documents and in order to give fair opportunity to the Petitioner/Plaintiff, and in the interest of justice this court is inclined to allow the petition to recall PW-1 on costs.

12. In the result, this petition in **I.A.No. 5/2022** is allowed on payment of cost of Rs.500/- to be paid by the Petitioner/Plaintiff to the Respondents/Defendants on or before 15.11.2022, failing which, this petition will be dismissed automatically. Call on 15.11.2022.

13. In the result, this petition in **I.A.No.6/2022**, is partly allowed in respect of document No. 4 to 11 and 13, and dismissed in respect of documents Nos. 1 to 3 and 12, on payment of cost of Rs.500/- to be paid by the Petitioner/Plaintiff to the Respondents/Defendants on or before 15.11.2022, failing which, this petition will be dismissed automatically. Call on 15.11.2022.

Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 8th day of November, 2022

District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondent side witnesses and documents:

Nil

District Munsif
Madurantakam