

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt.R.Mahalakshmi., B.A., B.L.,
District Munsif, Madurantakam
Saturday, the 21st day of June, 2025

I.A.No.9/2024

in

O.S.No.583/2014

1. Sadasivam

2. Aathilakshmi

...Petitioners/Defendants 1 and 2

-Vs-

1. Govindasamy (died)

2. Pazhani

...Respondents/Plaintiffs

3. Kasiyammal

4. Muniyammal

5. Vendamirtham

6. Pachaiyappan

...Respondents/Defendants 3 to 6

This petition coming up before me on 07.04.2025 for final hearing in the presence of, Thiru.V.Agoram, counsel for Petitioners/Defendants 1 and 2, and Thiru.K.Ayyasamy, counsel for the 2nd Respondent/2nd Plaintiff, and 1st Respondent/1st Plaintiff having been died and the Respondents/Defendants 3 and 4 having been set exparte in the main suit and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has filed by the Petitioners under Order 13 Rule 3 of Code of Civil Procedure, to demark the Exhibits B4 and B5 which is marked in the unregistered sale deed and to mark the Exhibits B4 and B5 in the power of attorney deed i.e., Exhibit B-3.

2. The averments stated in the petition, in brief :

(i). The Petitioner herein is the 1st Defendant in the suit. He filed this petition for himself and on behalf of 2nd petitioner also.

(ii). The Petitioner states that at the time of filing the documents he has stitched the unregistered sale deed on the back side of the power of attorney deed dated 11.02.2009. The Petitioner further states that during the PW2 and PW3 cross examination the signature in Power of attorney deed was marked as Exhibit B-1. Thereafter, during cross examination of PW2 and PW3 signature of Govindasamy and Pazhani was marked as Exhibits B4 and B5. Further power deed was marked as Exhibit B3 through PW2, one Krishnan. Therefore Exhibits B1 to B5 are marked in the power deed dated 11.02.2009. But all the aforesaid exhibits were marked in the unregistered sale deed stitched on the back of power deed.

(iii). The Petitioner further states that on perusal of cross examination of PW2 and PW3 clearly shows that they have not put question with respect to the unregistered sale deed which is stitched on the back of alleged power deed dated 11.02.2009. Hence the Petitioner states that it is just and necessary that Exhibits B4 and B5 which mistakenly marked in unregistered sale deed has to be demarked and to be marked as Exhibits B4 and B5 in the power of attorney deed dated 11.02.2009. The Petitioner further states that if this petition is not allowed he will be put to great loss and hardship. No prejudice will be caused to Respondent. Hence this petition has to be allowed.

3. The averments stated in the counter filed by the 2nd Respondent/2nd Plaintiff, in brief:

(i). This petition is not maintainable in law and on facts. The Respondent denies the entire allegations in the affidavit petition as false except those that are specifically admitted herein. The averments in the affidavit are false.

(ii). The Respondents/Plaintiff is the 2nd Plaintiff in the suit. The Respondent states that 1st Petitioner/1st Defendant is the son-in-law of 1st Respondent/1st Plaintiff

Govindasamy Gounder and 2nd Petitioner/2nd Defendant is the daughter of 1st Plaintiff/Respondent. The Petitioner states that during January 2009, 1st Plaintiff father approached the Defendants 1 and 2 for loan of Rs.10,000/- for further digging of the well situated in the 1st item of the suit property. The 1st Defendant agreed for the same and insisted 1st Plaintiff to execute mortgage deed for a sum of Rs.10,000/- and 1st Plaintiff being an illiterate and he does not know to read and write. Since the 1st Petitioner/Defendant is the son in law of 1st Plaintiff, he believed and put his signature in the document at registrar office. The 1st Respondent never intended to execute power deed infavour of 1st Defendant. The 1st Petitioner/Respondent by believing that the said documents is only a mortgage deed and put his signature. Further the 1st Petitioner/ 1st Defendant had not paid any amount to the 1st Respondent.

(iii). The Respondent further submits that he has not received any amount of Rs.3,00,000/- from the 1st Defendant and did not executed any receipt for the same. The Respondent further submits that the Petitioner have stitched the alleged unregistered sale deed on the back of the alleged power deed dated 11.02.2009. The Respondent further states that when PW2, Krishnan was cross examined by the Defendants counsel, his signature is marked as Exhibit B-1 in the power deed. Further the signature of Govindasamy and Pazhani was marked as Exhibits B-4 and B-5 during PW2 cross examination and power deed was marked as Exhibit B-3. Therefore all the Exhibits B1 to B5 were marked in the power deed dated 11.02.2009. But actually all the Exhibits were marked on the back of power deed i.e., unregistered sale deed. Further on perusal of cross examination of PW2 and PW3 had clearly shows that they have not put any question with respect to unregistered sale deed which is stitched on the back of alleged power deed dated 11.02.2009.

(iv). The Respondent further states that on perusal of alleged unregistered sale deed it shows that sale deed was executed for a consideration of Rs.3 lakhs. Further on perusal of unregistered sale deed shows that it is unregistered sale deed and not a

receipt and hence the said sale deed has to be sent for proper authority for collection of stamp duty penalty. The Respondent further states that Petitioner/Defendant is bound to pay stamp duty penalty of unregistered sale deed which is stitched on the back of power deed dated 11.02.2009. Further the Respondent states that they have not executed any unregistered sale deed and therefore it is fabricated and concocted documents.

(v). The Respondent further states that they have filed a petition to impound the unregistered sale deed dated 11.02.2009 and the same is pending before this court. Therefore the Respondent further states that once the document marked as exhibit cannot be demarked as claimed by the Petitioners. Further the provision under which the petition is filed by Petition is not maintainable. There is no bonafide reasons to demark the Exhibits B-4 and B-5. Hence the Petitioners is not entitled to mark Exhibits B-4 and B-5 in the power of attorney as prayed in the petition. Hence this petition has to be dismissed with costs.

4. The learned counsel for Respondents/Defendants 5 and 6 had endorsed no counter.

5. The point for determination is whether this petition is to be allowed or not?

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

7. The learned counsel for the Petitioner argued that during cross examination of PW2 and PW3, the signature of PW2 in power deed dated 11.02.2009 was marked as Ex B1 and power deed itself marked as Ex B3. Further he argued that the signature of PW3 and his father were marked as Ex B4 and Ex B5 in unregistered sale deed which is stitched along with back side of power deed mistakenly instead of marking in power deed, Ex B3. Hence the said exhibits marked as Ex B4 and B5 has be demarked and the same should be marked in Ex B3 power deed.

8. The learned counsel for respondent contended that he never intended to execute power deed in favour of 1st Defendant/Petitioner herein. Further the

respondent contended that all Ex B1 to B5 were marked on the back side of power deed is unregistered sale deed. The respondent counsel further contends that unregistered sale deed itself false and fabricated document and the said document has to be impounded. Further the learned counsel argued that once a document marked on exhibit cannot be demarked. Further the provision in which the present petition filed is not maintainable.

9. Heard both sides and perused the records.

10. On perusal of records it reveals that suit is filed by the Plaintiff for relief of declaration to declare sale deed dated 24.08.2011 as null and void and for the relief of permanent injunction. It further reveals that on the side of Plaintiff PW1 to PW5 were examined and suit is posted for DW1 cross continuation.

11. Further it is seen that 2nd Plaintiff, Pazhani was examined as PW3 and during cross examination of PW3, the Defendant/Petitioner counsel questioned the signature of 1st witness in Ex B3 in power deed and marked as Ex B4. Further in the said power deed Ex B3, PW3 father's signature was questioned and marked as Ex B5. Therefore from the deposition of PW3 it is apparent that the signature of PW3 and his father i.e., 1st Plaintiff herein were intended to be marked in Ex B3 i.e., power deed but erroneously it was marked in unregistered sale deed.

12. Though the respondent contended that he never intended to execute power deed in favour of petitioner herein and vehemently contends that all Ex B1 to B5 were marked on the backside of power deed is unregistered sale deed, the said contention is not sustainable as this court considers that core issue will be decided on merits at the time of judgment. And further contention of respondent that the provision in which the petition is not maintainable is also cannot be accepted as misquoting of a provision does not by itself disentitle a party to relief, if the facts otherwise justify the grant of relief. Thus this court consider that the procedural mistakes and inadvertently marking of documents would not cause any prejudice to respondent. And further mere marking of documents Exhibits B4 and B5 does not by

itself guarantee its admissibility and evidentiary value. The documents should be duly proved in accordance to law. Therefore in the light of above discussion this court is inclined to allow this petition.

14. In the result, this petition is allowed. No costs.

Dictated to the Stenographer, typed by her and corrected and pronounced by me in open court on this the 21st day of June, 2025.

Sd/-R.Mahalakshmi
District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondent side witnesses and documents:

Nil

Sd/-R.Mahalakshmi
District Munsif
Madurantakam