

**IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,
TIRUCHIRAPPALLI.**

Present : Thiru.B.Saravanan, B.Sc., B.L.,
II Additional District Judge,
Tiruchirappalli.

Monday, the 22nd day of April 2024

I.A. No. 7 of 2024 in O.S. No. 163 of 2018

1. G.Jagadeeswaran,
S/o M.S. Ganesan,

2. G. Arumugham @ Ravi,
S/o M.S. Ganesan,

3. G. Ayyappasamy.
S/o M.S. Ganesan,

1 to 3 Petitioners/Defendants residing at

No.137, New. No.10 Amma Mandapam Road,
Srirangam, Trichirappalli -6

4. Mrs. T.Manimekalai,
W/o Thiagarajan,
No.282, SPB Colony, Pallipalayam,
Erode-10.

5. S. Periyamayaki @ Uma,
W/o K. Sadanandam,
No.719, Nethaji Street,
Thuraiyur, Trichy.

... Petitioners/Defendants

/Vs/

N.Shanthi,
W/o M.Natarajan,
No.46, 9/78, Atchaya Apartments,
Chinnandankovil,
Karur.

... Respondent / Plaintiff

This petition coming before me on 15.04.2024 for enquiry in the presence of learned Advocate Thiru.S.K.Mani, for the Petitioners/Defendants and of learned Advocate Thiru.K.Sankar Murali for the Respondent/Plaintiff and upon considering the petition, counter and other connected documents on record and upon hearing both sides and having stood over till date for consideration this court today delivers the following...

ORDER

1. The Petitioners/Defendants 1 to 3 have filed this petition under order 13 rule 9 r/w 151 of C.P.C, seeking permission to return of the document marked by petitioner/1st Defendant as Ex.B.1 viz original registered Will dated 14.07.2010 registered as Document No.74/2010, executed by M.S. Ganesan, by replacing the certified Xerox Copy of the same.

2. The learned counsel for the Petitioners/ defendants would submit that the Petitioner/1st Defendant is contesting this case for himself and for Defendants 2 and 3 and the respondent/plaintiff has filed this suit for partition etc, earlier their father M.S. Ganesan had executed a registered Will dated 14.07.2010, registered as Document No.74/2010 in favour of the defendants 1 to 3 and the same was filed before this court on the side of defendants as Exhibit B.1 and the case is now pending for filing additional written statement. He further submitted that now the petitioner/1st defendant required the original Will

marked as Exhibit B.1, for title verification and he has also produced the Certified Xerox Copy Exhibit.B.1 and complied the condition and prayed that this petition may be allowed.

3. On the other hand, the learned counsel for the Respondent/Plaintiff would submit that the petition is not maintainable and the respondent /plaintiff has filed the suit for declaration of Ex B1 as null and void and for partition, already compromise negotiation was made, but the same was not fructified and the suit is part heard stage. The intention of the petitioner/1st defendant is to sell the property on the basis of Ex.B1 Will, hence they have come forward with this application to give hardship to the plaintiff. He further submitted that the petitioner has not given an undertaking to the effect that they will not encumber the property, during the pendency of the above suit. Hence, he prayed to dismiss this petition.

4. Heard Both Sides and Perused the Records. The only point that arise for consideration in this petition is whether the petition can be allowed or not?

Point:-

5. The learned counsel appearing for the Petitioners/Defendants has relied upon the following the decisions.

(1) The decision of the **Hon'ble High Court of Judicature at Madras** in

Beryl Dinakaran Vs Dr. D.Bennet in CRP. NPD. No. 3224 of 2008 on 17 August, 2009, wherein it is held as follows:- has held as follows:-

9. On a careful perusal of the said provisions we could see that the relevant provision would be Order 13 Rule 9(1) (b) and its proviso.

10. As already pointed out the respondent herein/D3 had taken the return of the documents Ex.B.7 to Ex.B.9 after giving undertaking to produce those documents before the Court. Therefore, it has become necessary for this Court to direct the respondent herein/D3 to produce those documents viz., Ex.B.7 to Ex.B9 before the lower Court for being kept restored in the case records of O.S.No.712 of 1996 in order to send those documents to this Court to the corresponding appeal on the call of this court. Time for reproducing all those documents Ex.B.7 to Ex.B.9 is one week from the date of receipt of copy of this order.

(2) The decision in Chenthilkumar vs Kottar Ezhavar Samudaya Vagai in C.R.P. (MD).No.563 of 2021 on 26 July, 2021, the Hon'ble Madurai Bench of Madras High Court has held as follows:

11. No doubt, the plaintiff has filed the suit for recovery of possession of the suit property and for permanent injunction restraining the revision petitioner from causing alienation 11. No doubt, the plaintiff has filed the suit for recovery of possession of or encumbrances over the suit property. According to the

plaintiff, the document sought to be returned is a legally invalid document and no right was accrued on the revision petitioner through the said sale deed. If that be the case of the plaintiff, I am at loss to understand as to why the plaintiff has been opposing the revision petitioner to get his documents. In the case on hand, as already pointed out, the plaintiff has filed the certified copy of Ex.B2 along with the petition under Order 13 Rule 9 CPC. Moreover, in the affidavit filed in support of the above petition, he has given a specific undertaking for the purpose of production of the original sale deed as and when called upon by the Court. Since the conditions are complied by the revision petitioner, required under the proviso Sub Rule 1 of Order 13 Rule 9 CPC, he certainly entitled to get back his original document and hence, the decision of the trial Court in dismissing the petition is not good in law and the same is liable to be set aside.

6. Keeping in mind, the principle enunciated in the above said decisions, I have to decide this petition. The respondent/Plaintiff has filed this suit for the relief of declaration to declare the registered Will No.74/2010 Dated 14.07.2010 executed by M.S.Ganesan infavour of the defendants 1 to 3 as illegal, void, not binding on the plaintiff and Defendants 4 and 5 and for partition etc.

7. In the suit, plaintiff side evidence was already over and on the side of the defendants 1 to 3 D.W.1 was examined in Chief and Ex.B.1 viz above said registered Will in Document No.74/2010 Dated 14.07.2010 was also marked and he was cross examined in part . The case was posted for filing additional written statement. Thereafter, for cross continuation of D.W.1. Now, the

defendants 1 to 3 have filed this petition for themselves and also for the defendants 4 and 5, who were set exparte in the suit, to return Ex. B1 viz Original Will 14.07.2010 by replacing the certified copy of the same.

8. It is necessary to reproduce Order 13 Rule 9 (1) of C.P.C., which reads as follows:-

Return of admitted documents:-

(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and laced on the records shall, unless the document is impounded under Rule 8, be entitled to received back the same.

(a) Where the suit is one in which an appeal is not allowed, when the suit has been disposed of; and

(b) Where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of;

[Provided that a document may be returned at anytime earlier than that prescribed by this rule if the person applying therefor

(a) delivers to the proper officer for being substituted for the original.

(i) in the case of a party to the suit, a certified copy, and

(ii) in the case of any other person, an ordinary copy which has been examined compared and certified in the manner mentioned in sub-rule (2) of Rule 17 of Order.

(b) undertakes to produce the original, if required to do so] Provided also that no document shall be returned which, by force of the decree has become wholly void or useless.

9. It is pertinent to note that the plaintiff has filed the suit for the relief of declaration to declare the registered Will No.74/2010 Dated 14.07.2010(Ex.B.1) and for partition and the case posted for filing additional written statement of defendant and for cross continuation of D.W.1. It is also relevant to look in to the proviso clause of Order 13 Rule 9 which states that .. Provided also that no document shall be returned which, by force of the decree has become wholly void or useless.

10. On careful perusal of the affidavit attached to the petition filed by the petitioner/1st Defendant, it is find that he has not given any undertaking to produce the said document viz Ex. B1 viz Original Will 14.07.2010 as and when required to do so. Further, the reason stated in the affidavit is that the petitioners are required Original Will Ex.B.1 for title verification. But no reason was assigned in the affidavit, to whom the original Will Ex.B.1 has to be produced and why certified copy is not enough for that reason.

11. The petitioners/defendants 1to 3 have filed this petition, without giving proper undertaking to reproduce the same as and when required to do so

and the reason stated for return of original of Ex.B.1 is also vague. Hence , the petitioners have not complied the conditions mentioned under Order 13 Rule 9 of C.P.C and the petition is liable to dismissed.

12. In the result, this petition is dismissed. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open court, on this the 22nd day of April 2024.

**II Additional District Judge,
Tiruchirappalli.**

List of witnesses and documents

on both sides : Nil

**II Additional District Judge,
Tiruchirappalli.**