

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF COURT,
SANKARANKOVIL.

Present : **Tmt.R.Mahalakshmi, B.A., B.L.,**
Additional District Munsif,
Sankarankovil.

Wednesday the 08th day of September 2021

IA.No.4/2020

in

O.S.No.255/2013

1. Sivanaiah

2. Maruthathal

... Petitioners/ Defendants 2 and 3

/ Vs /

1. Velammal

2. Arunachalam

... Respondents 1, 2 / Plaintiffs

3. Muthathal

4. Arasappan

5. Ayyadurai

6. Muthulakshmi

7. Shanmugathai

8. Marichamy

9. Marikannan

10. Shanmugathai

11. Venkateswaran

12. V.S.P.Kumar

... Respondents 3 to 12 /
Defendants 1 and 4 to 12

This petition is presented before me for hearing on 26.08.2021 in the presence of Thiru.K.Shanmugiah, learned counsel for Petitioners and of Thiru.A.Ravisankar, learned counsel for Respondents 1 and 2 and of Thiru.C.Ramakrishnan, learned counsel for Respondents 3, 8 and Respondents 4 to 7 and 9 to 12 are remained exparte and upon hearing the counsel on both side and on perusal of the records stood over for consideration till this day, this court delivers the following :-

ORDER

This Petition is filed under Order XIII, Rule 9 and section 151 of Code of Civil Procedure to return the original sale deed dated 26.10.1993 which is marked as Ex.R2 in I.A.No.732/2014 by substituting the certified copy in place of original sale deed dated 26.10.1993.

2. Brief of petition facts as follows:-

The petitioner herein 2nd defendant in the suit, he filed this petition for himself and on behalf of the 2nd petitioner. The petitioner states that the plaintiffs filed the suit seeking for the relief of partition and separate possession. The petitioner states that the plaintiffs have filed an application I.A.No.732/2014 for interim injunction against the 2nd petitioner herein and in that said I.A.No.732/2014 the petitioner/defendant herein marked Ex.R2 Original sale deed dated 26.10.1993 before this court. The petitioner states that they are in need of said original sale deed dated 26.10.1993 which is marked as Ex.R2 for taking steps before revenue authorities. The petitioner states that he is substituting the certified copy of Ex.R2 in lieu of original document and asking to return the original sale deed dated 26.10.1993. The petitioner states that there will be no loss and hardship caused to respondent if the document Ex.R2 original sale deed dated 26.10.1993 is returned to the petitioner. Further, petitioner undertake to return the original sale deed dated 26.10.1993 which is marked as Ex.R2 when the court requires it. Hence, the petitioner prays this court to return the original sale deed dated 26.10.1993 which is marked as Ex.R2 in

I.A.No.732/2014 by substituting the certified copy in place of original sale deed dated 26.10.1993.

3. Respondents 1 and 2 filed the counter. The counsel for respondents 3 and 8 endorsed as “ No Counter ”. The respondents 4 to 7 and 9 to 12 are already set exparte in the main suit and they are remained exparte.

4. **Counter filed by Respondents 1 and 2 in brief as follows :**

The Respondents 1 and 2 stated that this petition is not maintainable either in law or on facts. The averments stated in the petition are false and the petition has to be dismissed inlimine. The respondents states that the document sought to be returned is a vital document to this case. The respondents/plaintiffs states that the they filed the suit seeking for the relief of partition and separate possession against the defendants. The respondents states that if the original document is returned to the petitioner by substituting certified copy, there is a possibility for mutation in revenue records for obtained patta and thereby creating encumbrance over the suit property. The respondents states that if the petitioner alienate the property to some third parties, they will also be added as a parties to the suit and the suit proceeding will be delayed. The petitioner filed this petition only to prolong the case. Hence, if the original sale deed dated 26.10.1993 is returned by substituting the certified copy, it would cause irreparable loss and hardship to the respondents. Hence, the petition has to be dismissed.

5. **Now the point for consideration is whether this petition is liable to allowed or not?**

6. The learned counsel for petitioner argued that they are in need of Ex.R2 Original sale deed dated 26.10.1993 for taking steps before revenue authorities. Further they undertake to produce the original document whenever required by the

court.

7. Per contra, the learned counsel for respondents 1 and 2 contended that if the petitioner is permitted to get back the original sale deed, there is every possibility of the petitioner making mutation of revenue records and alienating or creating encumbrance over the suit property.

8. Heard both side. Records perused.

9. Upon hearing the submission of both parties, on perusal of case records, it is found that plaintiffs filed the suit seeking for relief of partition and separate possession. It is seen that the suit is in trial stage. The respondents 1 and 2/plaintiffs herein filed an I.A.No.732/2014 against the 2nd petitioner herein in which the petitioner have marked Ex.R2 original sale deed dated 26.10.1993 executed by 1st defendant in favour of 1st petitioner and 2nd petitioner's husband (Ramakrishnan). Further, a plain reading of Order XIII, Rule 9 makes it clear that a person who produces a document in the court is entitled to get back/receive the same on following circumstances ,

sub rule 1(a) : *“deals with a case where the suit has been disposed of against which no appeal is provided. “*

sub rule (b) : *“ where appeal is allowed, if no appeal is filed within the time stipulated for preferring the appeal or appeal has been filed and is disposed of.”*

If the case does not fall under the above mentioned two circumstances then proviso Clause says that

“ .. that the document can be returned at any time earlier than that prescribed by sub rule (I) if a party substitutes a certified copy of the document which is already marked and undertakes to produce the original if required to do so.”

10. In this case, the document sought to be returned is the original sale deed stands in the name of the petitioner herein who needs the document for taking some steps before revenue authorities. Further the petitioner filed certified copy of Ex.R2 along with the petition under Order XIII, Rule 9 CPC. He has also given an specific undertaking in the affidavit that he will produce the original sale deed as and when called upon by the court. Thus having regard to the facts and circumstances of the case, this court is of considered opinion that the petitioners are entitled to get back their original sale deed dated 26.10.1993 by substituting the certified copy of the same on the condition that they shall produce the same before this court whenever this court requires it.

In the result, this petition is allowed. The original sale deed dated 26.10.1993 marked as Ex.R2 in I.A.No.732/2014 is ordered to be returned to the petitioners on the condition that they shall produce the said document before this court whenever requires it. No costs.

Dictated to the Steno-Typist and typed by him directly in computer and corrected and pronounced by me in the open court this the 08th day of September 2021.

/Sd/ - R.MAHALAKSHMI
Additional District Munsif,
Sankarankovil.

Witness and Documents on the side of Petitioners :- - Nil -

Witness and Documents on the side of Respondents :- - Nil -

/Sd/ - R.MAHALAKSHMI
Additional District Munsif,
Sankarankovil.