



AS(MD) No.43 of 2014

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)**

Tuesday, the Eighteenth day of June Two Thousand and Twenty Four

PRESENT

The Hon`ble Mrs.Justice L. VICTORIA GOWRI

MP(MD)No. 2 of 2014

in

AS(MD) No.43 of 2014

P.NATARAJAN,

...PETITIONER/ APPELLANT

Vs

1 P.AYYAPPAN,

**2 UMA MAHESWARI, (UNSOUND MIND) ...RESPONDENTS/RESPONDENTS
REPRESENTED THROUGH GUARDIAN
MS.DHANALAKSHMI,**

**2ND RESPONDENT REPRESENTED BY GUARDIAN
AS PER ORDER OF COURT DATED 19.01.2017 MADE
IN CMP(MD)No.12539/2016 IN AS(MD)No. 43/2014 BY
SSSRJ**

Miscellaneous Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to direct the Sub Registrar, Melapalayam, Tirunelveli to produce the registration endorsement with thumb impression and other documents attached to the registration of settlement deed in Doc.No.1214/2006 dated 14.03.2006 in Ex.B1.

PRAYER IN AS(MD)NO. 43 of 2014:

To prefer this Memorandum of grounds of First Appeal against the judgment and decree passed in O.S.No. 132 of 2009 dated 26.09.2013 on the file of the 3rd

<https://www.mhc.tn.gov.in/judis>



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Additional District and Sessions Court , Tirunelveli.

ORDER : This Miscellaneous Petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.H.ARUMUGAM, Advocate for the petitioner, the court made the following order:-

Reserved On : 19.03.2024

Delivered On : 18.06.2024

The petitioner/appellant in the appeal suit has filed this petition to direct the Sub-Registrar, Melapalayam, Tirunelveli, to produce the registration endorsement with thumb impression and other documents attached to the registration of settlement deed in document No.1214 of 2006, dated 14.03.2006 in Exhibit B-1.

2.The petitioner is the appellant/first defendant. The original suit was filed by the brother of the petitioner, namely, P.Ayyappan, in O.S.No.132 of 2009 on the file of the learned III Additional and Sessions Judge at Tirunelveli, against the petitioner, namely, P.Natarajan and the second defendant, namely, Uma Maheshwari, who is the daughter of the petitioner's deceased sister, for partition and separate possession of his 27/32 share in the suit property, stating that the plaintiff's father was the absolute owner of the suit property and he died leaving behind the plaintiff and the defendants along with other sisters as his legal heirs and all the other co-owners have executed a release deed in favor of the plaintiff. However, the petitioner herein that is



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the first defendant was not amenable for partition. Against which, the first defendant, that is, the petitioner herein had filed a written statement claiming that their father had executed a registered settlement deed on 14.03.2005 in Ex.B1 settling life interest over the suit property to their mother and vested remainder to the petitioner, that is, the first defendant. As such, the petitioner is the absolute owner and mutation has also been effected in the name of the petitioner, that is, the first defendant, after the death of their mother. In the original suit, the petitioner/first defendant was examined as attesting witness as D.W.2 and proved the settlement deed. However, the first respondent, that is, the plaintiff alleged that their father was not in sound mind at the time of execution and that the settlement is a forged and concocted deed. But he has not examined anyone to prove that the same is a concocted and forged one, but filed a petition to compare the signature and a report was filed by the expert as if the signature is not tallied. Therefore, contending that the learned Trial Court by simply accepting the report and ignoring the entire evidence and also ignoring that the settlement deed is a registered one and the identity of the executor was also confirmed by the Sub Registrar and further their father's thumb impression has also been obtained in the said document as such it has got the sanctity of registration and that will prove the validity of the deed. However, the learned Trial Court had not given any independent finding about the report of the expert and had not explained



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its experience and not considered the report along with entire evidence available on record and ultimately decreed the suit on 26.09.2013. Hence, the present appeal has been filed by the petitioner herein. Further, it has been contended by the petitioner that the learned Trial Court simply accepting the expert report has given a finding that the signature in the settlement deed is not that of settler without even considering the sanctity attached for registration and thumb impression of their father obtained for registration of the deed, thereby rejecting the case of the first defendant, that is, the petitioner herein.

3.Contending that it is a settled law that the report of the expert is not a conclusive one and final one as the expert is not a jury or jurist, the petitioner further contended that the same has to be tested and decided along with entire evidence available on record. Further, it was contended that the thumb impression of the executor is also available in the document and in the Sub-Register, which will not change at any point of time and as such if the same is compared, it will help the first defendant as well as the Court to come to a right conclusion and on that basis, has filed this Civil Miscellaneous Petition seeking to direct the Sub-Register, Melapalayam to produce the registration endorsement with thumb impression and other documents attached to the settlement deed in document No.1214 of 2006

marked as Ex.B1.

<https://www.mhc.tn.gov.in/judis>



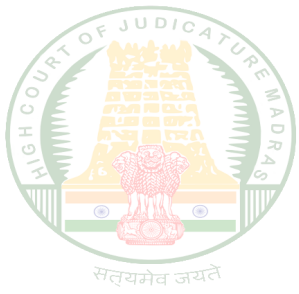
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4. Per contra, the respondents have filed a counter and the learned counsel appearing for the respondent drew my attention to I.A.No.78 of 2013 on the file of the learned III Additional District Judge, Tirunelveli filed in the original suit seeking to verify the thumb impression of the deceased father under Order 26 Rule 10(2) and Indian Evidence Act Section 73. However, by a Speaking Order, the learned Trial Court has duly rejected the petitioner's interim application and the operative portion is extracted as follows:-

“The alleged settlement deed is said to have been executed by the father of the petitioner by affixing his signature and not by affixing his thumb impression. In order to prove the execution of the document the petitioner has to prove the signature of his father and not his thumb impression. It is correct that the thumb impression of the person is obtained for completing the formalities before the Registrar and not during execution of the document. Even if the thumb impressions are sent to Forensic Experts and found that both are same, that will not prove the signature on the document. Further, the report of hand writing expert cannot be a conclusive proof, unless it is corroborated by other evidence.

So, I find no necessity to re-open the case or grant permission to send the alleged thumb impression for scientific investigation. Hence, this



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petitions should be dismissed.”

5.Heard the learned counsel for the petitioner, learned counsel for the first respondent and perused the materials available on record.

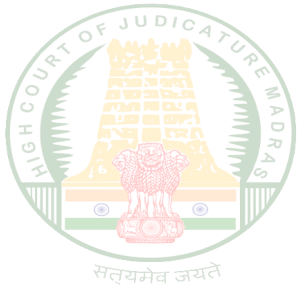
6.Having not challenged the same the petitioner allowed the learned Trial Court thereafter to proceed with the trial and conclude the case as a result of which, the trial court had decreed the suit as prayed for. This Court is of the considered view that since the petitioner has not challenged the decretal order passed by the learned Trial Court in I.A.No.78 of 2013 by filing a Civil Revision Petition, now he cannot file a fresh petition and it is a settled proposition of law that what cannot be done right directly cannot be done indirectly.

7.In view of the same, I am of the considered view that this Civil Miscellaneous Petition has been filed only with the sole intention of dragging on the Appeal Suit and hence, the same is not maintainable. Accordingly, the Miscellaneous Petition fails and the same is dismissed.

sd/-
18/06/2024

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/07/2024
Sub-Assistant Registrar
(C.S.I /II /III /IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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MRN
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TO
THE III ADDITIONAL DISTRICT
AND SESSIONS JUDGE, TIRUNELVELI.

ORDER
IN
MP(MD)No. 2 of 2014
in
AS(MD) No.43 of 2014
Date :18/06/2024

PKP/GS/SAR /25.07.2024/ 7P/ 2C

Madurai Bench of Madras High Court is issuing certified
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