

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1344 of 2012

&

M.P.No.1 of 2011

1. V.Venkatesan (Deceased)

2. Kanniyammal

3.V.Thulasingham

4.V.Kirubakaran

5.Parthiban (Minor)

6.Karthick (Minor)

7.Bharani (Minor)

(Petitioners 5 to 7 are represented

by their natural guardian mother)

...Petitioners

(Petitioners 2 to 7 brought on record as legal heirs

of the deceased sole petitioner vide order of court

dated 24.03.2015 made in M.P.Nos.1 to 3 of 2015 in

C.R.P.(PD) No.1344 of 2012)

vs.

R.Venkatesan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against order dated 03.12.2011 made in O.S.No.235 of 2003 on the file of District Munsif Court, Chengalpattu.

For Petitioners : Ms.R.Gouri

For Respondent : Mr.V.Nicholas

ORDER

The plaintiff in the original suit is the petitioner in the present Civil Revision Petition filed under Article 227 of the Constitution of India. The original suit has been filed for permanent injunction against the respondent herein on the premise that the revision petitioner/plaintiff is in possession and enjoyment of the suit property, which admittedly belongs to the Government and that any person, other than the Government, cannot be allowed to interfere with and disturb the peaceful possession and enjoyment of the plaintiff/revision petitioner in respect of the suit property.

2. The respondent /defendant, who also admits the property to be a poramboke land belonging to the Government, contends that it is he, who is in possession and enjoyment of the suit property, having got the same under a document dated 04.05.2000 from one Madurai S/o.Munusamy. The said document is an unregistered document titled as "Receipt". Contending that though the document was titled as "Receipt", in effect, what was sought to be done under the said document was transfer of the possessory right together with superstructure standing therein to the respondent herein/defendant and that hence, the same is inadmissible for want of registration. The

revision petitioner /plaintiff raised an objection for marking the said document as an exhibit when it was sought to be marked on the side of the respondent herein/defendant.

3. The learned trial Judge, who considered the objection overruled the objection and by an order dated 03.12.2011, held the said document to be admissible. The said order dated 03.12.2011 is made the subject matter of challenge in the present revision.

4.The arguments advanced by Dr.R.Gouri, learned counsel for the petitioners and Mr.V.Nicholas, learned counsel for the respondent are heard. The copy of the impugned order and copies of the other documents produced in the form of typed-set of papers are also taken into consideration.

5. As indicated supra, the land in question is a Poramboke land vested with the Government. The revision petitioner/plaintiff claims that he is in possession and enjoyment of the same for more than 16 years prior to the filing of the suit. Contending that he could protect his possession as against the whole world except the true owner, namely the Government, the revision petitioner/plaintiff prayed for a

decree in the original suit against the respondent, who allegedly attempted to interfere with the possession of the plaintiff, for a permanent injunction restraining him from doing so.

6. The respondent herein / defendant besides denying the plaint averment that the revision petitioner/plaintiff is in possession of the suit property, contends that it is he who is in actual possession and enjoyment of the suit property and that the permanent injunction sought for by the revision petitioner/plaintiff, who is out of possession, has got to be rejected. After the evidence of the plaintiff was over and during the course of recording of the evidence on the side of the defendants, the document in question, namely Document No.415 of 2000 was sought to be marked as an exhibit on the side of the respondent herein/defendant. An objection was taken by the revision petitioner /plaintiff contending that the said document purporting to transfer possessory right along with the superstructure standing in the disputed land is inadmissible for want of registration as such a document is compulsorily registrable under Section 17 of the Registration Act.

7. On the other hand, the revision petitioner/plaintiff contended that the document in question was not a deed of conveyance transferring title in respect of an immovable property and that hence, non-registration of the same will not impede the admissibility of the document in evidence. The respondent/defendant took an alternative plea that even if it is assumed that the document is compulsorily registrable, it can be used for proving a collateral transaction or for a collateral purpose. In support of his contention, the learned counsel for the respondent has relied on the order of a learned single Judge of this Court in ***Muniappa Gounder Vs. P.Dhanasekaran*** reported in **2015 (1) CTC 363**. In the said order, the learned Single Judge, after referring to the provision and also the observations made by the Supreme Court in ***Bondar Singh V. Nihal Singh*** reported in **2003 (2) CTC 635 (SC)** held that a document, which is compulsorily registrable and not registered, can be received as evidence of any collateral transaction, which transaction is not required to be effected by a registered instrument. Besides, the learned Single Judge held that such an unregistered document could be admitted to prove a collateral purpose, namely to prove possession. The said observation may be correct to the case dealt with by the Single Judge and the same will not be applicable to the case on hand as the facts of the case

are entirely different from the facts of the other case dealt with in ***Muniappa Gounder's*** case. It was a case for declaration and permanent injunction on the premise that the family property had already been divided and the parties were in possession and enjoyment of separate shares allotted to them. A partition of the immovable properties need to be effected by a written document and it can be oral also. Similarly, a family arrangement in lieu of partition can also be oral. If at all the same is sought to be accomplished by a document in writing, not being a document evidencing the transaction which had already taken place, then such a document, namely partition deed or the family arrangement shall have to be compulsorily registered. As such, a partition deed or a family arrangement in lieu of partition shall come within the mischief of Section 17 of the Registration Act. However, such mischief is diluted by the proviso which says that a document which is compulsorily registrable and not registered can be received in evidence for proving a collateral transaction which is not required to be accomplished by way of a registered document. The collateral transaction in the case cited by the learned counsel for the respondent was the separation of the properties and separate enjoyment of the properties by the sharers in order to show that there was actually a partition *de hors* the

unregistered partition deed. Only under such circumstances, for proving separate enjoyment alone, the said document was held to be admissible in proof of the collateral transaction of separate enjoyment of the shares by the co-sharers.

8. To say that a document, which is inadmissible by virtue of the main provision of Section 17 of the Registration Act, can be admitted for the proof of a collateral transaction, such collateral transaction should be of a nature which does not require to be accomplished by a registered document. Here in the case on hand, the document which is sought to be relied on is in fact a deed of conveyance conveying the possessory title over the land and also the superstructure put up therein for a sale consideration of Rs.7,000/-. To be precise, what was sought to be conveyed by the document in question was the superstructure permanently fixed to the ground, which will answer the description of immovable property and also the possessory title over the disputed land. As such, it cannot be contended that the document did not purport to convey any right or title in the immovable property.

9. The document has been titled as "Receipt" because the parties to the document were conscious of the fact that if they venture to register a sale deed, the same would not be successful. Keeping in mind the law relating to the compulsorily registration of a documents and admissibility of the unregistered document, the said document seems to have been titled as a "Receipt". Therefore, without any hesitation, this Court can hold that the document dated 04.05.2000 is one that comes within the mischief of the main provision of Section 17 of the Registration Act.

10. Though a document falls within the main provision of Section 17, before rejecting said document as a piece of evidence, its admissibility under the proviso should also be taken into consideration. The proviso makes such a document admissible for proof of a collateral transaction. **'Collateral transaction'** should not be confused with **'collateral purpose'**. The proviso makes it clear that the 'collateral transaction' for the proof of which the document can be admitted should be of such a nature that it does not require to be done by a registered document. Here the respondent wants to rely on the said document not for proving any 'collateral transaction' which is not required to be done by a registered document, when he intends to use

it for proving his alleged possession of the suit property. What cannot be done directly cannot be allowed to be done indirectly by giving a interpretation that the '**collateral transaction**' can be interpreted to mean '**collateral purpose**' also.

11. In the light of the forgoing discussions, this Court comes to the conclusion that the document in question is not admissible as a piece of evidence either for proving the transaction sought to be made therein or for proving a 'collateral transaction' since 'no collateral transaction' is sought to be proved by relying on the said document. If at all the respondent wants to prove his possession, he can rely on other documents like 'B' Memo, House Tax Assessment, Receipts for payment of the water tax and other revenue outgoings. In stead of doing it, the respondent wanted to adopt a shortcut method by getting a document styled as "Receipt" containing recitals as if the possessory right over the land and title in respect of the superstructure standing thereon have been conveyed to him. Such an attempt has got to be checked and this Court shall not allow the same.

12. For all the reasons stated above, this Court comes to the conclusion that the trial Court committed an error and its order holding

the document in question to be admissible is quite against law and illegal capable of being interfered with and set aside by this Court in exercise of its power under Article 227 of the Constitution of India.

13. In the result, the Civil Revision Petition is allowed and the impugned order dated 03.12.2011 made in O.S.No.235 of 2003 is set aside. The marking of the document dated 04.05.2000 has got to be cancelled and the document should be rejected as untenable. No costs. Consequently, the connected miscellaneous petition is closed.

24.03.2015

Index: Yes/No
Internet: Yes/No
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To

The District Munsif Court
Chengalpattu

P.R.SHIVAKUMAR.J.,

gpa

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