

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.02.2015**

CORAM

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

**C.R.P.(PD)No.4233 of 2012
and M.P.No.1 of 2012**

Sengunthar Thirumana Mandapam,
Athanoor, Rep. by its Secretary,
Thiru. Annamalai.

... petitioner

Versus

1.P.Loganathan
2.K.Manickam
3.C.Dhanapalan
4.T.A.Jayakumar
5.A.Nataraj

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 21.09.2012 made in I.A.No.559 of 2012 in O.S.No.44 of 2011 on the file of the Court of District Munsif, Rasipuram.

For petitioner : Mr.N.S.Sivakumar

For Respondents : Mr.S.Sithirai Anandam

ORDER

The arguments advanced by Mr.N.S.Sivakumar, learned counsel for the petitioner and Mr.S.Sithirai Anandam, learned counsel

for the respondents are heard. The impugned order of the trial Court and the materials produced in the form of typed-set of papers are also perused.

2. The order impugned in the present revision is one passed in I.A.No.559 of 2012 in O.S.No.44 of 2011 on the file of the Court of District Munsif, Rasipuram. The revision petitioner figures as the plaintiff in the above said original suit. The suit came to be filed praying for a permanent injunction restraining the respondents from in any manner interfering with the administration of the Thirumana Mandapam, by its secretary.

3. In order to substantiate their contention that the land for the construction of Thirumana Mandapam had been gifted under a settlement deed dated 27.12.1974 by one Thava Thriu Kundrakudi Adigalar in favour of Nalvazhi Sangam and the Sangam collected funds and constructed the Thirumanamandabam and in order to show that the land belongs to the said Sangam, the petitioner/plaintiff wanted to mark the said gift deed dated 27.12.1974, which is unregistered, as an exhibit. As the claim of the petitioner to the title of the land in which, the Thirumana Mandabam has been put up was sought to be

established under the said unregistered gift deed, the trial Court refused permission to mark the same as an exhibit on the side of the petitioner/plaintiff, holding that the document was compulsorily registrable under Section 17 of the Registration Act, 1908 and hence it was inadmissible in evidence under Section 49 of the said Act. Thereafter, with the intention of inviting a specific order, the petitioner chose to file I.A.No.559 of 2012 in O.S.No.44 of 2012. The learned trial Judge, after hearing, passed an order assigning reasons for the refusal to grant permission to mark the said document as an exhibit on the side of the plaintiff. As against the said order, the present revision has been filed.

4. Upon hearing the arguments advanced on both sides and after perusing the impugned order and the other documents, this Court does not find any defect or illegality in the order of the trial Court, which is impugned in this revision. A gift deed of immovable property for a value more than Rs.100/- is compulsorily registrable under Section 17 (1) (a) of the Indian Registration Act, 1908. Section 49 of the Registration Act states that no document required by Section 17 of the Registration Act or by any provision of the Transfer of Property Act to be registered, shall affect any immovable property

comprised therein or be received as evidence of any transaction affecting such property unless it has been registered. However, the proviso states that an unregistered document affecting immovable property and required under the Registration Act or the Transfer of Property Act, to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered document.

5. Relying on the second part of the proviso, the learned counsel for the petitioner makes an attempt to contend that the gift deed was sought to be marked only for a collateral purpose, but still the trial Court refused permission to mark the same as an exhibit.

6. This Court is not in a position to countenance of the above said argument for the simple reason that the petitioner has not come out with the collateral purpose for which the document is sought to be used. The main prayer in the suit itself has been made on the basis that the Sangam got the land by virtue of the gift deed and the Thirumana Mandabam situated therein was constructed by the committee of the Sangam with the help of the collections made from the members of a particular community. The fact of such collection

and construction of the Thirumana Mandabam and also the management of the Thirumana Mandabam can be proved by other evidence and not by the production of the unregistered gift deed relating to the land. The purpose sought to be achieved by the production of the unregistered gift deed is only to establish title to the land, as the basis for their contention that they are entitled to the relief of permanent injunction as prayed for in the suit. The purpose of production of the document being one to establish the title, it cannot be accepted as a piece of evidence, as it is made inadmissible as per Section 49 of the Registration Act 1908. The Court below has not committed any error or illegality in passing the impugned order rejecting permission to mark the said document dated 27.12.1974 as an exhibit on the side of the petitioner/plaintiff. There is no merit in this revision and the same deserves to be dismissed.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.02.2015

Index : Yes/No
Internet : Yes/No
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P.R.SHIVAKUMAR, J.

vsm

To

The District Munsif Court, Rasipuram.

C.R.P.(PD)No.4233 of 2012

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