IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2016

Coram

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P. No. 4631 of 2011

1. Thajul Hudha
W/o.Ramasamy
Sembathiniruppu Village
Sirkali Taluk
Nagapattinam District

2.Abdul Rashid
S/o Fathers name not known
Sarangapani South Street
Kumbakonam,
Thanjavur District Petitioners/Defendants 1&2

Vs

1.Pandarinathan
S/o Govindarajulu
Allivilagam Village,
Sirkali Taluk
Nagapattinam District. 1st Respondent/Plaintiff

2. Ramasamy
S/o.Govindarajulu
Sembathiniruppu Village
Sirkali Taluk
Nagapattinam District 2nd Respondent/3rd Defendant

Prayer: Civil Revision is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dt:15.9.2011 and made in IA 719 of 2011 in OS No.295 of 2006 on the file of District Munisiff, Sirkali.

For Petitioners : M/S.S.Sounthar

For 1st Respondant : Mr.S.Sarath Chandran for M/S.K.M.Vijayan Associates.

For 2nd Respondant : No Appearance.

ORDER

Challenging the fair and decreetal order, dt.15.9.2011 made in IA No. 719/2011 in OS No 295/2006, on the file of District Munisif, Sirkali, this Memorandum of Civil Rsevision is filed.

2. The revision petitioners herein are the defendants 1&2 in the suit in OS.No 295/2006, whereas the 1st respondent herein is the plaintiff and the 2nd respondent herein is the 3rd defendant.

3. It is apparent from the records that the 1st respondent had filed the suit as against the revision petitioners 1&2 and the 3rd respondent herein seeking the relief of declaration and the consequential relief of permanent injunction.

4.This suit was contested by the revision petitioners by filing their written statement.

5. It is manifested that during the dependency of suit, the 1st

respondent being the plaintiff had filed an application in IA 719/2010 under section 151 of the Code of Civil Procedure to send the document dated 21.9.2005 (surrender deed said to have been executed by one Ms.Hathoon Beevi in favour of the plaintiff) to the Revenue Divisional Officer, Mayiladurai for determining the Stamp duty and penalty. This petition was resisted by the revision petitioners by filing their counter statement.

6. After hearing both sides learned District Munisif of Sirkali had allowed this petition on 15.11.2011 on condition that the plaintiff shall produce the Xerox copy of the document dated 21.9.2005 along with a proof affidavit ,explaining the reason as to how far this document could be used as collateral document to substantiate the case of the plaintiff. The 1st respondent (plaintiff) was directed to produce the Xerox copy of the document along with the proof affidavit on or before 21.9.2011.

7.Having been aggrieved by the impugned order dated 15.9.2011, the defendants 1&2 have approached this court with this civil revision petition.

8. It is the contention of the 1st respondent that already he had filed an application to receive the above said document as documentary evidence and that application was dismissed, on the ground that this document dated 21.9.2005 was required stamp duty. The 1st respondent, had therefore come forward with the above said application in IA 719/2011 to impound the said document and send the same to the Revenue Divisional Officer for determining the stamp duty.

9.The contention of the revision petitioners is that previously a petition in IA 489/2019 was filed by the plaintiff to receive the document dt:21.9.2005 as a documentary evidence. That petition was dismissed with a finding that it could not be received as documentary evidence, as the same was inadmissible for want of registration.

10.That order was not challenged by the plaintiff. Again the plaintiff had filed another petition in IA 602/2010 seeking the very same relief which was earlier rejected by the trial court. Subsequently that petition was not pressed on 3.8.2010. Under this back ground the revision petitioners had contended before the trial court that since the document dt:21.9.2005 which was sought to be received as the documentary evidence was held to be inadmissible, there was no need to send it for validation.

11. The trial court after rejecting the contention of the revision petitioners/defendants 1&2 had proceeded to allow the petition on 15.9.2011.

12.In the impugned order, the trial court has found that in so far as the document which is sought to be received is concerned it could be received as a collateral document and therefore it might be sent to the Revenue Divisional Officer to determine the stamp duty and penalty.

13. This court has gone through the grounds of revision along with the impugned order. This court has also struck a balance between the submissions of both sides. On perusal of the records this court is able to find that the suit in OS.No 295/2006 was filed in the month of Dec.2006. It is apparent that previously the plaintiff had filed a petition in IA

480/2919 under section 151 of the code of civil procedure to receive the document dt.21.9.2005 as documentary evidence. That petition was dismissed on 28.6.2010. This order was not challenged by the plaintiff. The trial court while dismissing the above petition had found that the document ought to have been registered under section 17 of registration act, and since the document was not registered it could not be received in evidence. The plaintiff himself has admitted this fact in his affidavit filed in support of his petition.

14.It is also revealed from the counter statement filed by the revision petitioners that the suit was once dismissed for default on 27.10.2010. Subsequently it was restored on file on 29.6.2011. As afore stated the plaintiff had made strenuous attempt to produce the document before the trial court through an application in IA 480/2010. In this attempt he had virtually failed. Again for the 2nd time he was trying to produce the same document to be received as documentary evidence through another petition in IA 602/2010. However he had not pressed this petition on 3.8.2010. Obviously this is the 3rd innings. However he got succeeded in his attempt. The trial court has not taken in to consideration of the past happenings. Earlier the 1st respondent/plaintiff had made two more attempts to produce the very same documents but his petitions were dismissed Since the ir petition in IA 719/2011 being his 4th petition, it should not have been allowed, as the earlier orders were left unchallenged. Under this circumstance this court is of considered view that the petition in IA 719/2011 itself is not maintainable.

In the result the revision petition is allowed. The impugned order dt.15.9.2011 is set aside and the petition in IA 480/2010 is dismissed. There will be no orders as to cost.

10.11.2016

Index : Yes/No

Internet : Yes/No

T.MATHIVANAN.J.,

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