IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD)No.1123 of 2012
and
M.P.No.1 of 2012

Dhanalakshmi .. Petitioner

Vs

1.Muniammal @ Senthamarai
2.Perumal
3.Sivanandham
4.Arumugham
5.Natarajan
6.Mani @ Mahaganapathi .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and the decreetal order dated 09.12.2011 passed in I.A.No.112 of 2011 in O.S.No.168 of 2010 on the file of II Additional Subordinate Court, Cuddalore.

For Petitioner : Mrs.R.Meenal

For Respondents : Mr.R.Gururaj (for R1 to R6)

ORDER

The Civil Revision Petition is filed against the fair and the decreetal order dated 09.12.2011 passed in I.A.No.112 of 2011 in O.S.No.168 of 2010 on the file of II Additional Subordinate Court, Cuddalore.

2.The case of the petitioner is that the respondent / plaintiff has filed a suit in O.S.No.168 of 2010 for partition and separate possession of the 1/4th share in the suit properties. The respondent / plaintiff has marked Exhibits-A3 and A4. The said documents are Photostat copies of unregistered release deeds and partition deed. The said documents were filed along with the suit and the admissibility has been objected even in the written statement. In fact, the respondent / plaintiff has filed Proof Affidavit, the said Proof Affidavit was recorded and documents were marked in the absence of the petitioners' counsel. The Court should have also seen that the documents are in admissible and ought not to have marked them. Even for the said documents, the stamp duty and penalty has not paid. Therefore, the Photostat copies cannot be received as even stamp duty cannot be paid on them. Hence, the petitioners / defendants 1 to 6 have filed the petition in I.A.No.112 of 2011 in O.S.No.168 of 2010 under Section 151 of C.P.C.

and Section 17 of the Registration Act to eschew Ex.A3 and Ex.A4.

3.The case of the respondent / plaintiff is that the objection with regard to non-registration need not be decided at this stage. In fact, there is no prohibition with regard to marking of Xerox copies. Any objection made by the petitioner / defendant about the marking of the said documents should be raised only at the time when they have tendered in evidence. Therefore, the respondent / plaintiff states that the petitioner / defendant cannot sleep, then and wake up later. Their admissibility on any ground other than stamp duty should not be considered at the time of marking. The respondent / plaintiff also states that with regard to deficiency in stamp the same cannot be raised after the document is marked and that should be raised at the time of marking of the said documents. The trial Court can consider the objection of the evidentially value at the time of contest the case. For supporting his case the respondent / plaintiff has produced a citation in ***B.V.Srinivasan v. B.V.Tulasiraman reported in 2001-2-L.W. 259***. Therefore, the respondent / plaintiff prayed for the dismissal of the petition in I.A.No.112 of 2011 in O.S.No.168 of 2010 dated 09.12.2011.

4.The learned II Additional Subordinate Judge, Cuddalore has allowed the application in I.A.No.112 of 2011 in O.S.No.168 of 2010 and the documents marked on behalf of the respondent / plaintiff in Ex.A3 and Ex.A4 are ordered to be eschewed by the trial Court. The learned II Additional Subordinate Judge, Cuddalore has considering the case of the petitioners / defendants that the documents in Ex.A3 is a Xerox copy of release deed dated 21.03.1995 and Ex.A4 is the Xerox copy of partition deed dated 21.01.1978 and both the documents are not original and if the said documents are original, they get impounded. Whereas Ex.A3 and Ex.A4 are the Xerox copies and they are not registered one. The learned Judge also given the reason that as per Section 17 of Indian Registration Act, any document which exceeds the value of Rs.100/- has to be registered. If not, stamp duty penalty has to be paid. Therefore, the petition in hand in respect of Ex.A3 and Ex.A4 are the Xerox copies and they are also unregistered documents. Therefore, the marking of the said documents are not valid in the eye of law. Therefore, considering the above facts that if the documents are original they can be impounded for want of Stamp Duty Penalty. Since the original of Ex.A3 and Ex.A4 are not filed there is no necessity of marking of the documents for impounding. Considering the respondents / defendants case, the Court below has allowed the application on 09.12.2011 and Ex.A3 and Ex.A4 are ordered to be eschewed. Challenging the said order, the petitioner / plaintiff has filed the present civil revision petition.

5.Heard Mrs.R.Meenal, learned counsel appearing for the petitioner and Mr.R.Gururaj, learned counsel appearing for the respondents 1 to 6.

6.On perusal of the documents and hearing of the arguments on either side that it is admitted fact that in Ex.A3 and Ex.A4 are Xerox copies of the release deed dated 21.03.1995 and partition deed dated 21.01.1978 respectively. The Hon'ble Apex Court in a case in ***Shalimar Chemicals Works Ltd. v. Surendra Oil & Dal Mills (Refineries) & Ors*** held as follows:-

> "The trial Court should not have "marked" as exhibits the Xerox copies of the certificates of registration of trade mark in face of the objection raised by the defendants."

It is very clearly held that the Xerox copy cannot be marked and the Court below ought not to have marked the said Xerox copies, even there was no objection from the other side. But, citation produced by the respondent / plaintiff in ***2001-2-L.W. 259*** was over ruled by the

Hon'ble Apex Court in the above Judgment.

7.Admittedly both the documents Ex.A3 and Ex.A4 are Xerox copies and marking the documents by the trial Court is totally against the orders of the Hon'ble Supreme Court. Even otherwise, if the said documents were original then that should be get impounded and the Court below should directed the plaintiff to pay stamp duty penalty. But, the case on hand, the very documents are Xerox copies and that should not be marked. Therefore, marking of the documents Ex.A3 and Ex.A4, there is no necessity of the above said documents for impounding. The trial Court has properly consider the case of the respondents / defendants and ordered to be eschewed since the documents Ex.A3 and Ex.A4 are invalid. Hence, there is no necessity to interfere with the orders of the learned II Additional Subordinate Judge, Cuddalore made in I.A.No.112 of 2011 in O.S.No.168 of 2010 dated 09.12.2011.

8.In the above circumstances, I am inclined to pass the following orders:

(a)This civil revision petition is liable to be dismissed.

Accordingly, the same is dismissed without costs.

(b)Since the suit is of the year 2010, the trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order on day today basis and both the parties are hereby directed to cooperate for early disposal of the suit.

9.Therefore, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2016

vs

Note:Issue order copy on 01.09.2016.

Index: Yes.
Internet: Yes.

To

The II Additional Subordinate Court,
Cuddalore.

M.V.MURALIDARAN.J.,

vs

C.R.P.(PD)No.1123 of 2012
and
M.P.No.1 of 2012

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