

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2016

CORAM:

THE HON'BLE MR.JUSTICE **K.K. SASIDHARAN**

CRP(PD). No. 1996 of 2016
& CMP. No. 10425 of 2016

1. N.Rajammal
2. N.Palani
3. N.Padmanabhan

.. Petitioners

Vs

S.K. Vadivel Reddy (died)
1. S.V. Thayumanavan
2. S.V.Jagedeesan
3. S.V.Vinayagam
4. S.V.Murugan

.. Respondents

Prayer: This petition filed under Article 227 of the constitution of India against the fair order and decretal order of IA.No.886 of 2015 in OS.No.34 of 2009 dated 22.12.2015 on the file of the District Munsif Court, Tiruttani (FAC).

For Petitioners : Mr.A.Sumathy

For Respondents : Mr.A.Gouthaman

ORDER

The petitioners filed a suit for injunction in O.S.No.34 of 2009 before the learned District Munsif, Thiruttani. In the said suit, the petitioners took up a contention that they are in possession and enjoyment of the suit property on the strength of the partition deed dated 24.08.1946. The attempt made by the petitioners to mark the unregistered partition deed dated 24.08.1946, was opposed by the respondents. The learned Trial Judge dismissed the application in I.A.No.886 of 2015, on the ground that the contention of the petitioners that the unregistered partition deed can be marked for collateral purpose is unsustainable, in view of their own pleadings. The said order is under challenge in this Civil Revision Petition.

2.The learned counsel for the petitioners contended that even in the document relied on by the respondents, there is a mention about the partition deed dated 24.08.1946 and as such, the learned Trial Judge was not right in dismissing the application in I.A.No.886 of 2015.

3.The learned counsel for the respondents on the other hand admitted the factual position found in the impugned order. According to the learned counsel, the petitioners wanted to mark a document to prove the title and as such, the trial Court was justified in dismissing the application.

4.The petitioners filed a suit for permanent injunction. It is not in dispute that the petitioners are claiming that they are in possession and enjoyment of the suit property on the strength of the partition deed dated 24.08.1946.

5.The petitioners wanted to mark an unregistered partition deed dated 24.08.1946. The learned trial Judge dismissed the application mainly on the ground that suit being for injunction, title is not an issue.

6.The background facts clearly indicates that the petitioners wanted a decree for injunction on the basis of their possession. It was

only to prove their possession, the petitioners have attempted to mark the document in question dated 24.08.1946. Even the respondents are relying on the document dated 24.08.1946. When it is made out that the petitioners and the respondents are claiming possession of the respective portions pursuant to the document dated 24.08.1946, the trial Court was not correct in dismissing the application on the ground that even for collateral purpose, the document cannot be used. I am therefore of the view the impugned order is liable to be set aside.

7.In the result, the order dated 22.12.2015 in I.A.No.886 of 2015 in O.S.No.34 of 2009 is set aside. I.A.No.886 of 2015 is allowed.

8.The learned trial Judge is directed to mark the unregistered partition deed dated 24.08.1946 subject to proof and relevancy. The document would be marked only for the purpose of proving the factual possession and not to establish title.

9.The Civil Revision petition is allowed as indicated above.
No costs. Consequently, connected miscellaneous petition is closed.

03.10.2016

jbm

Index : Yes/No

To

The District Munsif, Thiruttani.

K.K. SASIDHARAN, J.

jbm

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