

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (PD) No.1417 of 2017 &
C.M.P.No.6566 of 2017

M.Umashankar

... Petitioner

Vs.

Nagarajan

... Respondent

Prayer: Revision filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 02.01.2017 made in I.A.No.141 of 2016 in O.S.No.218 of 2012 on the file of the Subordinate Judge, Ranipet, Vellore.

For Petitioner : Mr.Mohanamurali

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 02.01.2017 made in I.A.No.141 of 2016 in O.S.No.218 of 2011 on the file of Subordinate Court, Ranipet, Vellore.

2. The petitioner is the 1st defendant and the respondent is the plaintiff in the suit in O.S.No.218 of 2012 on the file of Subordinate Court, Ranipet, Vellore.

3. The respondent/plaintiff filed a suit in O.S.No.218 of 2012 on the file of the Subordinate Judge, Ranipet, seeking for partition of the schedule mentioned properties and to allot one share to the plaintiff. The petitioner filed his written statement dated 02.08.2014 and is contesting the suit.

4. The trial commenced and after the completion of respondent's side evidence and completion of chief examination of DW1, the petitioner filed an Interlocutory Application in I.A.No.141 of 2016 for condoning the delay in filing certain documents to be relied by the petitioner/1st defendant.

5. According to the petitioner, the receipt issued by the respondent/plaintiff for having received the money was misplaced at the time of filing of the written statement and therefore, the said document could not be filed earlier.

6. The respondent filed his counter and denied the averments made in the application. The said document was written in a letter pad alleging that the respondent received a sum of Rs.5 lakhs and relinquished his right over the joint family properties. According to

him, the alleged document is a fabricated one. As per Section 17 of the Registration Act, any document relating to right of immovable property above the value of Rs.100/- is to be compulsorily registered. But, this document is not a registered one and it cannot be received and marked and it cannot be taken for even collateral purpose.

7. The learned Judge, considering the materials available on record, dismissed the application holding that relinquishment of right over the immovable property by the respondent by receiving a sum of Rs.5,00,000/- and the receipt for the same, has to be compulsorily registered. The petitioner has not made any mention about the same in the written statement which was filed on 02.08.2014 when the relinquishment is dated 10.06.2012. The petitioner has come out with the application after completing the evidence on behalf of the respondent and the chief examination on behalf of the petitioner/first defendant as DW1.

8. Against the order of dismissal by the trial Court, the present Civil Revision Petition is filed.

9. Heard the learned counsel for the petitioner and perused the materials available on record.

10. The contention of the learned counsel for the petitioner that the learned Judge has not properly appreciated the facts and ought to have given an opportunity to the petitioner to mark the document for collateral purpose or in any event, to receive the document and direct the petitioner to pay the stamp duty and penalty if any, are unsustainable in law. Even, the petitioner have not mentioned in the written statement filed on 02.08.2014 about the receipt, now sought to be marked and relinquishment of right of the respondent. The reasoning given by the petitioner for not filing the document earlier, especially, before the commencement of the trial when not even stated in the written statement filed on 02.08.2014, are not acceptable. The petitioner is not only seeking to rely on the said document for collateral purpose but to show that the respondent relinquished his right by receiving Rs.5,00,000/-.

11. The learned trial Judge after considering all the materials available on record, dismissed the application by giving valid and cogent reasons. Therefore, there is no illegality or irregularity

warranting interference by this Court with the order dated 02.01.2017 passed by the Subordinate Court, Ranipet, Vellore.

12. Accordingly, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is dismissed.

17.04.2017

Index : Yes/No

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To

The Subordinate Judge,
Ranipet, Vellore.

V.M.VELUMANI, J

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