

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.1442 of 2017

&

C.M.P.No.6700 of 2017

1.Kumar @ Mohan Kumar

2.Ravichandran

.. Petitioners/Defendant

Vs.

1.K.B.Velayudham

2.Deivanayagi

.. Respondents/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.08.2016, made in I.A.No.599 of 2014 in O.S.No.65 of 2010 on the file of the District Munsif, Thiruvallur.

For Petitioners : Mr.M.S.Subramanian

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 16.08.2016 made in I.A.No.599 of 2014 in O.S.No.65 of 2010 on the file of the District Munsif, Thiruvallur.

2. The petitioners are the defendants and the respondents are the plaintiffs in O.S.No.65 of 2010 on the file of the District Munsif Court, Thiruvallur. The suit is one for declaring the second respondent herein is the absolute owner of the suit item 1 and 2 and for consequential permanent injunction restraining the petitioners from interfering with 2nd respondent's peaceful possession and enjoyment of the suit property and for permanent injunction restraining the petitioners from alienating or creating any kind of encumbrance over the suit properties. The petitioners filed written statement on 08.07.2010 and are contesting the suit.

3. The first respondent was examined as PW1. At this stage, the petitioners have filed an application in I.A.No.599 of 2014 praying to mark the admitted signatures of the respondents' father, viz., K.K.Balasubramani Chetty found in the partition Deed dated 16.07.1998 as Exs.B2 to B6.

4. According to the petitioners, the first respondent was examined as PW1. During his examination, he admitted the signature of the respondents' father in the said document. Therefore, the petitioners are seeking to mark the admitted signatures alone, which will not amount to marking of the document and admitting the contents of the document.

5. The respondents filed counter and denied the averments made in the application and submitted that the petitioners and the respondents are not the parties to the unregistered partition deed dated 16.07.1998 and the respondents are not aware of the contents in the said partition deed.

6. According to the petitioners, item-2 mentioned in the suit property alone is the common property. As per the unregistered partition deed dated 16.07.1998, the petitioners and the respondents have not divided the properties. In the year 2003, the partition deed was registered. The contention of the petitioners is that the petitioners are intended to rely upon the contents of the unregistered partition deed dated 16.07.1998 to prove that item-2 of the suit property is kept common for the parties.

7. Learned Judge, considering the averments made in the affidavit, counter affidavit and the materials available on record, dismissed the application holding that unregistered document is admissible in evidence for a collateral purpose that is to say for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. The learned Judge dismissed the application holding that even though the petitioners sought to mark the signatures of respondents' father in the said deed, the intention of the petitioners is to rely on the contents of the said unregistered partition deed and it cannot be marked.

8. Against the order of dismissal dated 16.08.2016 made in I.A.No.599 of 2014 in O.S.No.65 of 2010 on the file of the District Munsif Court, Thiruvallur, the present Civil Revision Petition is filed by the petitioners/defendants.

9. The learned counsel for the petitioners contended that the petitioners have sought to mark the signatures of the father of the first respondent alone in the unregistered partition deed and the said signatures were admitted by the first respondent in his cross-examination as PW1. The learned counsel further contended that the learned Judge had erred in dismissing the application to mark the admitted signatures found in the partition deed dated 16.07.1998. Therefore, he prayed for allowing the revision.

10. Heard the learned counsel for the petitioners and perused the materials available on record.

11. In the affidavit filed by the petitioners in support of the application in I.A.No.599 of 2014, it is stated that in the unregistered partition deed dated 16.07.1998, it is mentioned that item-2 of the suit property alone kept as common property. From this, it is clear that the intention of the petitioners is to rely the contents of the said unregistered partition deed to substantiate their case that item -2 of the property alone is kept as common property.

12. From the materials available on record, it is seen that the petitioners and the respondents are not parties to the said document dated 16.07.1998. From the contention of the petitioner, it is clear that the interest of the immovable property has been created by the unregistered partition deed dated 16.07.1998, which was entered by the fathers of the first respondent and petitioners and one K.K.Raghava Chettiar. In view of creation of interest in immovable property, the said partition deed is compulsorily registerable.

13. The learned Judge considering all the materials available on record dismissed the application by giving cogent and valid reasons and by exercising the powers conferred on him. There is no illegality or irregularity in the order passed by the trial Court warranting interference by this Court.

14. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To
The District Munsif,
Thiruvallur.

+1cc to Mr.M.S.Subramanian, Advocate in Sr.No.23571

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SVI (CO)
NR 16/06/2017