

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1860 of 2017
& C.M.P.No.8943 of 2017

Dhandapani

.. Petitioner

Vs.

1. Visalakshi
2. Rajendran

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.03.2017 passed in I.A.No.202 of 2017 in O.S.No.33 of 2009 by the Learned Subordinate Judge, Dharapuram.

For Petitioner : Mr.A.S.Baalaji

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 22.03.2017 passed in I.A.No.202 of 2017 in O.S.No.33 of 2009 by the Learned Subordinate Judge, Dharapuram.

2. The petitioner is the 1st defendant and the respondents are the plaintiffs in O.S.No.33 of 2009. The respondents filed the said suit for partition and for separate possession. The petitioner filed written statement and additional written statement and is contesting the suit. Trial commenced. The respondents let in evidence and closed their side. The petitioner himself was examined in-chief as D.W.1 and marked six documents. The above suit was posted for cross examination of Petitioner / D.W.1. At that stage, the respondents filed I.A.No.967 of 2015 to eschew the documents Ex.B1 and Ex.B2 marked by the petitioner, on the ground that those documents are un-stamped and unregistered. The petitioner filed I.A.No.189 of 2016 stating that the said documents may be impounded for payment of stamp duty and petitioner is willing to pay stamp duty.

3. The learned Judge allowed the application filed by the petitioner in I.A.No.189 of 2016 and dismissed the application in I.A.No.967 of 2015 filed by the respondent. Subsequently, two documents Ex.B1 and Ex.B2 were sent to Sub-Registrar Dharapuram. The Sub-Registrar verified the documents and sent a report dated 31.01.2017 and assessed the stamp duty of

Rs.17,750/- for Ex.B.1 and Rs.39,385/- for Ex.B2 and sent the report to the learned Judge. On receiving the report, the learned Judge directed the petitioner to pay the stamp duty with penalty. The Court granted number of adjournments for payment of stamp duty. Subsequently, on 22.02.2017, the learned Judge passed following order:-

"Posted as last chance, in spite of several chances given and penalty assessed D1 has not paid stamp duty with penalty and therefore the documents cannot be received as evidence."

The learned Judge passed an order holding that the said documents cannot be received in evidence, as the petitioner failed to pay the stamp duty and penalty.

4. The petitioner filed present I.A.No.202 of 2017 to delete the order dated 22.02.2017 in the notes paper. According to the petitioner, the documents are only record of past transaction and it is not a partition deed. Therefore, it need not be stamped and registered. The respondents filed counter affidavit and opposed the said application. The learned Judge considering the averments mentioned in the affidavit, counter affidavit, order passed in I.A.No.189 of 2016, dismissed the application.

5. Against the order of dismissal dated 22.03.2017 made in I.A.No.202 of 2017, the present civil revision petition is filed by the petitioner.

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

7. From the materials available on record it is seen that when the petitioner marked two documents, viz., Ex.B1 and Ex.B2, the respondent objected the same and filed I.A.No.No.967 of 2015 for deleting the same. The petitioner filed I.A.No.189 of 2016 stating that he is willing to pay the stamp duty with penalty and prayed for impounding the documents. In view of the same, the application filed by the petitioner in I.A.No.189 of 2016 was allowed and documents were referred to Sub-Registrar, Dharapuram and the Sub-Registrar, Dharapuram sent the report to the learned Judge, on receiving the report from the Sub-Registrar, the petitioner was directed to pay the stamp duty and penalty. Even after taking number of adjournments, the petitioner has not paid the stamp duty and penalty. Therefore, the learned Judge has passed the impugned order.

8. In view of the earlier contention of the petitioner that he is willing to pay the stamp duty and penalty and prayed for impounding the document, the present contention of the petitioner that Exs.B1 and Ex.B2 are only record of past transaction and it is not a partition deed, is devoid of merits. The learned Judge considered all the above facts and rightly dismissed the application filed by the petitioner. There is no illegality or irregularity in the order of the trial Court in I.A.No.202 of 2017 dated 22.03.2017 warranting interference by this Court.

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

14.06.2017

Speaking Order/Non-speaking Order
Index :Yes/No

av / ssd

To

The Learned Subordinate Judge,
Dharapuram

V.M.VELUMANI, J.

av / ssd

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