

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.2223 of 2011

1.Kumara Raja
2.Mohan Raj
3.Thangaraj
4.Elavarasan
5.Alli
6.Anbarasan
7.Jeeva

.. Petitioners

Vs.

1.Kuppammal
2.Palani
3.Sundar
4.Pushpa
5.Kanakaraj

.. Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, against the fair and decretal order dated 22.01.2011 made in O.S.No.305 of 1978 on the file of the Additional District Munsif Court, Tindivanam.

For Petitioners : Mr.S.K.Rakhunathan

For R1, R3 & R4 : No appearance

For R2 : Mr.R.Sunilkumar

For R5 : Not ready in notice

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 22.01.2011 made in O.S.No.305 of 1978 on the file of the Additional District Munsif Court, Tindivanam.

2. The petitioners are the plaintiffs 4,5,6,8,9,10 and 11, respondents 1 to 4 are the defendants 1 to 4 and fifth respondent is the seventh plaintiff in O.S.No.305 of 1978 on the file of the Additional District Munsif Court, Tindivanam. The petitioners along with the fifth respondent and others filed the said suit for declaration and permanent injunction. The respondents 1 to 4 filed written statement and are contesting the suit. The trial commenced and at the time of evidence on behalf of the petitioners, the petitioners and other plaintiffs sought for marking unregistered document. According to the petitioners and other plaintiffs, the said document is an agreement to extend the period of mortgage. The respondents 1 to 4 opposed marking of the said document on the ground that the said document is extension of mortgage for five years and it has to be registered. The learned Judge, framed preliminary issue to decide:

1. Whether the document no.10 is to be registered?

2. Whether the said document no.10 filed by the petitioners and other plaintiffs can be marked as their side evidence?

3. The petitioners and other plaintiffs contended that the document no.10 sought to be marked is only an agreement to extend the period of mortgage and it is not a mortgage and it is not compulsorily registrable. The respondents 1 to 4 contended that by document no.10 sought to be marked by the petitioner, the mortgage already created is extended for a period of five years and therefore it is compulsorily registrable. The learned Judge, considering the contention of the learned counsel for the parties and judgments relied on by the parties, held that by document no.10 sought to be marked mortgage is extended for five years and it has to be registered as per Section 17 of Registration Act and it can not be marked as a document, unless it is registered.

4. Against the said order dated 22.01.2011 made in O.S.No.305 of 1978, the present civil revision petition is filed by the petitioners.

5. Heard the learned counsel appearing for the petitioners second respondent and perused the materials available on record. Though notice was served on the respondents 1, 3 and 4 and their names are printed in the cause list, there is no representation either in person or through counsel.

6. A copy of the said document no.10 sought to be marked by the petitioners is filed in the typed set of papers filed by the petitioners. A reading of the said document shows that mortgage already created has expired and is being extended by further period of 5 years. The recital in the document clearly shows that the mortgage is being created for five years. It is not an agreement to extend the period of mortgage. It is only a mortgage deed. It has to be duly stamped and compulsorily registrable. In view of the above facts, the civil revision petition is devoid of merits and is liable to be dismissed.

7. Accordingly, the civil revision petition is dismissed. No costs. Since the suit is of the year 1978, the learned Additional

District Munsif is directed to dispose of the same within a period of two months from the date of receipt of a copy of this order.

24.08.2017

Index: Yes/No
gsa

To

The Additional District Munsif,
Tindivanam.



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V.M.VELUMANI, J.

gsa



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