

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (PD) No.1810 of 2013

1.Lakshmi
2.Raja
3.Panneerselvam

.. Petitioners

Vs.

1.Selvi
2.Devi
3.Selvam
4.Moorthy

.. Respondents

Revision filed under Article 227 of Constitution of India against the fair and decretal order in I.A.No.444 of 2012 in O.S.No.98 of 2009 on the file of the learned Sub-Court, Madurantakam.

For Petitioners : Mr.G.Rajkumar

For Respondents : Mr.K.Govi Ganesan

ORDER

This revision is directed against the order of the learned Sub-Court, Madurantakam dated 01.03.2013 made in I.A.No.444 of 2012

in O.S.No.98 of 2009, dismissing the petition filed by the petitioners to permit them to mark a copy of the Deed of Acceptance dated 28.07.1991. The petitioners herein are the defendants in the suit.

2. The plaintiffs have filed the suit for partition of the suit properties into two equal shares and to allot one such share to them and also for mesne profits alleging that the suit properties originally acquired by deceased Subbaraya Gounder and he died leaving his two sons viz., Muthu and Varadan. The plaintiffs are the legal heirs of late Varadan and the defendants are the legal heirs of late Muthu.

3. Resisting the suit, the defendants 1 and 7 have filed their written statement.

4. Pending suit, the first defendant filed an application being I.A.No.444 of 2012 seeking permission of the Court to mark the copy of Deed of Acceptance dated 28.07.1991 stating that during the life time, Subbaraya Gounder executed a Deed of Acceptance in front of the village panchayat elders and the said document was handed over to the father of the plaintiffs and later on the copy of the same was handed over to the father of the defendants. After the demise of the

father of the plaintiffs, the said document was in possession of the plaintiffs. Since the said Deed of Acceptance is relevant to the suit proceedings, the first defendant requested the plaintiffs to produce the same. But the plaintiffs have refused to produce the Deed of Acceptance before the Court. The first defendant has also issued notice dated 18.09.2012 for production of the said document and the plaintiffs in their reply stated that there is no such document available. Since the plaintiffs have refused to produce the Deed of Acceptance dated 28.07.1991, it is necessary for the first defendant to produce the copy of the same before this Court. Hence, the present application has been filed seeking permission of the Court to produce the Deed of Acceptance dated 28.07.1991.

5. Resisting the application, the fourth respondent filed the counter stating that in their written statement, the defendants have mentioned the document dated 28.07.1991 as agreement between Subbaraya Gounder, Muthu and Varadan. Now in the memo of production of the document as well as in the application, the first defendant mentioned the document as Deed of Acceptance, which itself shows that they have forged the document. The first defendant never pleaded in her written statement that the original was available

with the plaintiffs or deceased late Varadan. According to the fourth respondent, the said document is a concocted one and the same cannot be received in evidence.

6. Upon consideration of the rival submissions, the learned trial Court dismissed the application. Aggrieved by the same, the petitioners have filed the present Civil Revision Petition.

7. I heard Mr.G.Rajkumar, learned counsel for the petitioners and Mr.K.Govi Ganesan, learned counsel for the respondents and perused the records.

8. Learned counsel for the petitioners submitted that the trial Court was not justified in dismissing the prayer seeking permission of the Court for production of the copy of the Deed of Acceptance dated 28.07.1991. In support of his contention, the learned counsel for the petitioners cited the decision in *AIR 1999 Supreme Court 1668 (Nawab Singh v. Inderjit Kaur)*.

9. Learned counsel for the respondents submitted that in order to protract the trial proceedings, the first defendant has filed the

application seeking permission of the Court to produce the copy of the Deed of Acceptance. He further submitted that the trial Court has rightly rejected the prayer of the petitioners.

10. On a perusal of the typed set of documents, it is seen that the trial of the suit commenced and the evidence on the side of the plaintiffs was closed. When the suit was listed for evidence on the side of the defendants, the first defendant has filed I.A.No.444 of 2012 seeking to mark the copy of the Deed of Acceptance dated 28.07.1991.

11. According to the respondents, the Deed of Acceptance alleged to be executed by Subbaraya Gounder is unregistered one and therefore, the same cannot be received in evidence.

12. In *Nawab Singh v. Inderjit Kaur*, reported in AIR 1999 SC 1668, the Hon'ble Supreme Court held as follows:

"Having heard the learned counsel for the parties, we are of the opinion that the trial Court was not justified in rejecting the prayer seeking leave of the Court for production of secondary evidence. The prayer has been rejected mainly on the ground that the copy of the rent note sought to be produced by

the appellant was of doubtful veracity. The trial Court was not justified in forming that opinion without affording the appellant an opportunity of adducing secondary evidence. The appellant has alleged the original rent note to be in possession of the respondent."

13. It is pertinent to note that the decision rendered in *Nawab Singh*, supra, is in different context and the nature the document in the said case is a rent note; whereas in the case on hand, the first defendant is trying to produce a photocopy of unregistered Deed of Acceptance.

14. Admittedly, the first defendant filed her written statement on 03.06.2010. On a perusal of the written statement, I find that there is no whisper about the execution of the document now styled by the first defendant as "Deed of Acceptance". In one or two places in the written statement, the first defendant stated that Subbaraya Gounder created a Deed of Approval, whereby divided the "A" schedule property of the partition deed in front of village panchayat elders on 28.07.1991. There is no averment in the written statement that the original Deed of Acceptance was in possession of late Varadan, father of the plaintiffs and after the demise of Varadan with the plaintiffs.

15. In the order under revision, the trial Court, on going through the copy of the deed to be received in evidence, observed that the recital of the document shows that the executor of the document intent to give his properties to his sons. The trial Court, in its order, further observed that when rights of immovable properties were transferred to others by way of document, the said document should compulsorily be registered as per Indian Registration Act. The trial Court further observed that how far the document in question would resolve the issue in question in the suit.

16. In a catena of decisions, this Court as well as the Apex Court held that a family arrangement which is not stamped and not registered, cannot be looked into for any purpose.

17. It is also settled law that if the family arrangement is reduced to writing and it purports to create, declare, assign, limit or extinguish any right, title or interest of any immovable property, it must be properly stamped and duly registered as per the Indian Stamp Act and Indian Registration Act.

18. It is also settled law that photocopy of an unregistered document *per se* inadmissible in evidence and the same should not have been allowed to be marked as exhibit.

19. As stated supra, assuming that Subbaraya Gounder executed Deed of Approval by transferring his rights over immovable properties owned by him to his sons, since the said document is unregistered one, the same cannot be received in evidence. When the said document is an unregistered one, no evidentiary value could be attached to the said unregistered document. Therefore, I find that the photocopy of the Deed of Acceptance or Deed of Approval, as the case may be, is no way helpful to decide the issue involved in the suit, as the suit is one for partition. It is the bounden duty of the plaintiffs to prove their case that they are entitled to get half share in the suit properties by production of relevant documents and also by adducing oral evidence. The claim of the plaintiffs is that as legal heirs of Varadan, they are entitled to half share in the suit properties.

20. On perusal of the order of the trial Court, I find that the trial Court, after analysing the rival submissions and on going through the recital of the alleged Deed of Acceptance and also after citing the

several decisions, rightly rejected the application. It is to be pointed out when the suit was listed for defendants' side evidence, the first defendant took out the application seeking to receive/mark the document, which shows that only in order to protract the trial proceedings only, the first defendant has filed the application. There are no valid grounds warranting interference of this Court and the Civil Revision Petition is liable to be dismissed.

21. In the result, the Civil Revision Petition is dismissed by confirming the order passed in I.A.No.444 of 2012 in O.S.No.98 of 2009 dated 01.03.2013 on the file of the learned Sub-Court, Madurantakam. No costs. Consequently, connected miscellaneous petition is closed. It is also made clear that observations, if any, in this order, touching the merits of the suit, will not prevent the trial Court in deciding the Issues involved in the suit.

सत्यमेव जयते

03.04.2017

Note: Issue order copy on 23.03.2018

vs

Index : Yes
Internet : Yes

To

The Sub-Court,
Madurantakam.

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M.V.MURALIDARAN,J.

VS



C.R.P.(PD) No.1810 of 2013

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