

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3168 of 2012
& M.P.No.1 of 2012

S.R.Goundappan

.. Petitioner

Vs.

1. S.R.Chinnathambi
2. C.Chennayan
3. C.Chennakesavan

.. Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India against the fair and decreetal order dated 09.07.2012 made in I.A.No.166 of 2011 in O.S.No.80 of 2009 on the file of the learned Subordinate Judge, Tirupatthur, Vellore District.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.K.Moorthy

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ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 09.07.2012 made in I.A.No.166 of 2011 in

O.S.No.80 of 2009 on the file of the Subordinate Judge, Tirupatthur, Vellore District.

2. The petitioner is the plaintiff, respondents are defendants in O.S.No.80 of 2009 on the file of the Subordinate Judge, Tirupatthur, Vellore District. The petitioner filed suit for partition, separate possession and permanent injunction, restraining the respondents from selling the property. The respondents filed written statement on 24.07.2009 and are contesting the suit. The trial commenced and parties let in their evidence. While deposing first respondent as DW1, marked the document dated 30.01.2003 as Ex.B3, in support of his case. The petitioner filed I.A.No.166 of 2011 in O.S.No.80 of 2009, under Order 13 Rule 3 and Section 151 C.P.C, to reject the said document.

3. According to the learned counsel for the petitioner, the said document is a partition deed and it is to be stamped and compulsorily registered. While Ex.B3 is unstamped and unregistered. In spite of the objection raised by the petitioner, the said document was marked.

4. The respondents filed counter on 08.08.2011 and opposed the said application and submitted that Ex.B3 is not a partition deed. Their contention is that Ex.B3 is a document recording the past transaction of oral partition. As per the earlier oral partition, the petitioner and respondents are in possession and enjoyment of the respective properties allotted to them. In respect of some properties allotted to the petitioner, patta was issued in the name of the respondents and in respect of some properties allotted to the respondents, patta was issued in the name of the petitioner. In view of the same, Ex.B3 was entered into by the petitioner and respondents, recording the earlier oral partition and exchange of properties to each other in respect of patta issued to them. Ex.B3 is not a partition deed. It is only a record of past transaction of oral partition and therefore, it is not liable to be stamped and registered.

5. The learned Judge considering the averments in the affidavit, counter affidavit, document Ex.B3 and following the judgment of Division Bench of this Court reported in "**(2001) 1 MLJ 1 (Ac. Lakshmi pathy and another Vs. A.M.Chakrapani Reddiar and five others)**", dismissed the application.

6. Against the said order dated 09.07.2012, made in I.A.No.166 of 2011 in O.S.No.80 of 2009, the present application is filed by the petitioner.

7. Heard the learned counsels on both sides and perused the materials available on record and the judgments relied on by the learned counsel for the respondents viz., **"(2016) 1 SCC 670 (K.Mallesh Vs. K.Narender and others)"**, **"(2005) 4 LW 418 (M/s.Jayalakshmi Trading Co., rep. By one of its partners D.S.Chalam Vs. Krishnamurthy and others)"**, **"(2003) 8 SCC 752 (R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P.Temple and another)"**, **"(2004) 7 SCC 107 (Dayamathi Bai Vrs. K.M.Shaffi)"**, **"(2015) 1 LW 307 (Muniappa Gounder Vs. P.Dhanasekaran)"**.

8. On a careful consideration of the Ex.B3 and a reading of the same clearly shows that it is a record of earlier oral partition. In the suit, the petitioner has claimed partition in respect of 36 properties. As per the Ex.B3, only some of the properties were exchanged by the petitioner and respondents. It is well settled that a document

which records earlier partition is not liable to be stamped and registered. This issue is no longer res integra.

9. A Division Bench of this Court in judgment reported in **“(2001) 1 MLJ 1 (Ac. Lakshmipathy and another Vs. A.M.Chakrapani Reddiar and five others)”** has elaborately considered the issue and held that a document recording the past transaction or earlier partition, is not liable to be stamped and registered. This judgment is followed by this Court in number of subsequent judgments and orders in view of the well settled legal position.

10. The learned Judge has rightly dismissed the application. by considering the entire facts and law in proper perspective. There is no irregularity or illegality warranting interference by this Court with the order of the learned trial Judge, dated 09.07.2012.

11. Accordingly, the civil revision petition is dismissed as devoid of merits. No costs.

Index : Yes/No
gsa

21.07.2017

V.M.VELUMANI, J.

gsa

To

The Subordinate Judge,
Tirupatthur, Vellore District.



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