

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.2.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3656 of 2017 and C.M.P.No.17011 of 2017

B.Gowri

...

Petitioner/2nd Plaintiff

Vs.

1 S.Padmavathy

...

1st Respondent/Defendant

2 B.Lavanya

3 B.NIresha

4 B.Suganya

5 B.Vijay

...

Respondents 2 to 5/Plaintiffs 3 to 6

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order, dated 19.08.2017 in Memo in O.S.No.7 of 2008 on the file of the Principal Sub Court, Puducherry.

For Petitioner : Mr.R.Rajarajan

For Respondent No.1 : Mr.R.Thiagarajan

For Respondents 2 to 5 : No appearance

ORDER

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According to the petitioner, the petitioner has filed a suit in O.S.No.7 of 2008 against the first respondent for recovery of sum of Rs.3,41,000/- along with interest from the date of plaint till realisation. In the

aforesaid suit, the defendant/first respondent herein has filed a memo praying the court below to reject the unregistered sale deed, dated 21.2.2007 and not to mark the said document as exhibit. The trial court erroneously allowed the memo. Challenging the said order, the petitioner has filed the present Civil revision petition before this Court.

2 According to the learned counsel for the petitioner, the document sought to be relied upon by the petitioner is unregistered sale deed, dated 21.2.2007 and the same has to be marked only for the collateral purpose. The learned counsel for the petitioner relied on the decision of this Court in **SOLAI VS. PERIYAKARUPPAN [(2015) 1 L.W.134]** wherein Madurai Bench of this Court has held as under:

"10. From the various judgments relied on by the parties, an unregistered unstamped document can be marked and relied on by the party for collateral purpose. it is also well settled that the Courts must mark an unregistered unstamped document subject to the objection by the opposite party. The Court should not shut down the evidence at the threshold itself. At the time of final decision only, the Courts must consider the evidence based on the document and objections by the opposite party. If the Courts come to the conclusion that the objection with regard to document is sustainable, then the evidence based on the said document must be rejected. The learned Judge committed irregularity by rejecting the marking of documents at the threshold itself.

The learned Judge ought to have marked the documents subject to the objections as per well settled law. Therefore, the order of the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti, dated 18.9.2013, passed in I.A.No.511 of 2013 in O.S.No.149 of 1995 is liable to be set aside. Accordingly, the impugned order is set aside."

The learned counsel for the petitioner also relied on the decision of this Court in **P.NARAYANAN VS. KASI [2009(5) CTC 822]** to contend that even an unregistered document can be marked for collateral purpose. Therefore, the order passed by the court below is liable to be set aside.

3 Per contra, the learned counsel for the respondent would submit that in the light of the decision of this Court in **LAKSHMIPATHY & ANOTHER VS. A.K.CHAKRAPANI REDDIAR [2001 (1) MLJ 1]** unregistered, unstamped document cannot be relied upon by the petitioner. Therefore, the petitioner cannot mark the sale deed, dated 21.2.2007. The court below has rightly dismissed the application. Therefore, the Civil revision petition is liable to be set aside.

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

5 On perusal of the order passed by the court below, it seems that the court below relied upon the decision of the Division Bench of this Court in **LAKSHMIPATHY & ANOTHER VS. A.K.CHAKRAPANI REDDIAR [2001 (1) CTC 112]** wherein this Court held as under:

23. It is now fairly well settled that the co-owners can partition the immovable properties orally. But, however where a document is employed to effectuate a partition or any of the transactions specified in Section 17 of the Registration Act such document must be registered, notwithstanding with the transaction is one which the law does not require to be put into writing. Such unregistered document cannot be looked into to prove the terms of the partition. But, however the same if inadmissible in evidence for the purpose of creating, declaring, assigning, limiting or extinguishing a right to immovable property. The expression "collateral purposes" is no doubt a very vague one and the Court must decide in each case whether the parties who seek to use the unregistered document for a purpose which is really a collateral one or as is to establish the title to the immovable property conveyed by the document. But by the simple devise of calling it "collateral purpose", a party cannot use the unregistered document in any legal proceedings to bring about indirectly the effect which it would have had if it registered."

The learned counsel for the petitioner relied on the decision of this Court in **P.NARAYANAN VS. KASI [2009(5) CTC 822]** wherein this Court held as under:

"10. Therefore, it is very clear that even an unregistered document can be looked into by the trial Court for collateral purpose if the party is willing to pay the deficit stamp duty and the penalty."

6 Therefore, it is clear from the aforesaid fact that unregistered sale deed, dated 21.2.2007 relied upon by the petitioner can be marked at the time of trial subject to objection of the respondent if any, at the time of marking of the document. The objection of the respondent can be decided by the court below at the time of trial in the suit. In the event of marking the aforesaid document, it is open to the court below to take note of the provisions under Section 33 of Indian Stamp Act, 1899. Therefore, the order passed by the court below is liable to be set aside.

7 In the light of the decisions cited supra, the order passed by the learned Principal Sub Court, Pondicherry in Memo in O.S.No.7 of 2008, dated 19.08.2017 is unsustainable and the same is set aside.

8 The Civil revision petition is allowed with the above observations. No costs. Connected miscellaneous petition is closed.

14.2.2018

D.KRISHNAKUMAR,J.

vaan

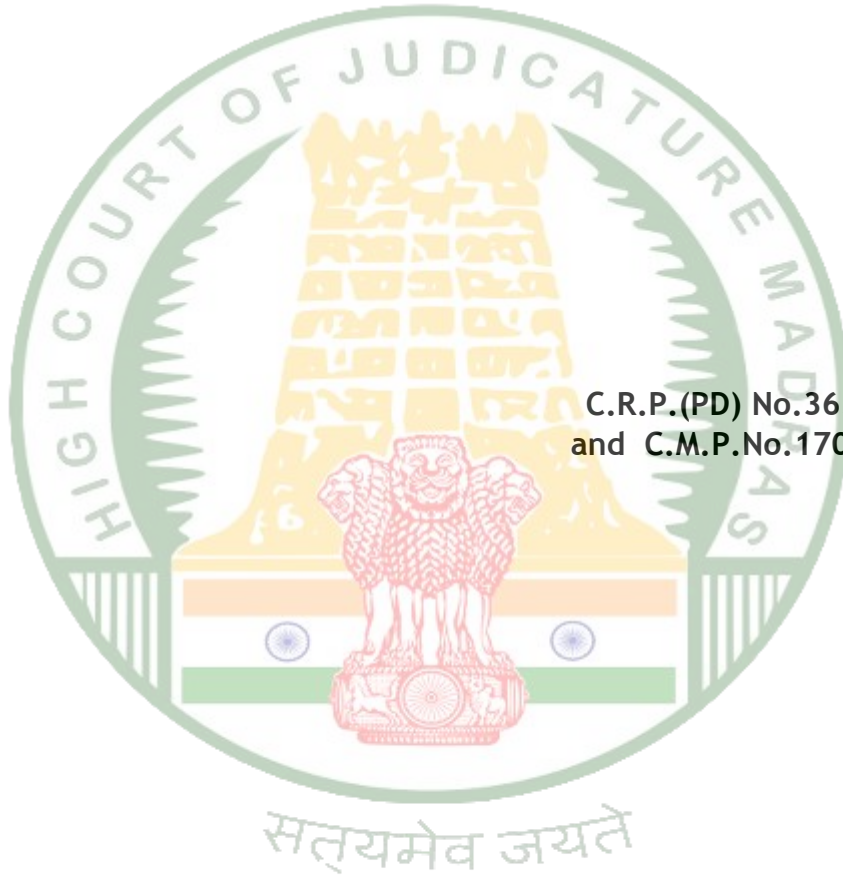
Speaking/Non Speaking order

Index: Yes/No

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To

The Principal Sub Court, Puducherry



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