

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.978 of 2014
& M.P.No.1 of 2014

T.R.Marimuthu

.. Petitioner

Vs.

1.Munusamy
Gurunathan (Died)
2.Thangamani
3.Thangamani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 13.02.2014 made in I.A.No.363 of 2013 in O.S.No.164 of 2011 on the file of the II Additional District Munsif Court, Bhavani.

For Petitioner : M/s.J.Star
for Mr.N.Manokaran

For R1 & R3 : M/s.P.Saritha
for M/s.Zeenath Begam

For R2 : No appearance

ORDER

This Civil Revision petition is filed to set aside the fair and decretal order dated 13.02.2014 made in I.A.No.363 of 2013 in

O.S.No.164 of 2011 on the file of the II Additional District Munsif Court, Bhavani.

2.The petitioner is plaintiff and respondents are defendants 1, 3 and 4 in O.S.No.164 of 2011 on the file of the II Additional District Munsif Court, Bhavani. The said suit was filed by the petitioner for permanent injunction restraining the respondents and one deceased Gurunathan from interfering with the petitioner's peaceful possession and enjoyment of the suit property and for permanent injunction restraining the respondents and deceased Gurunathan from damaging the underground pipeline laid connecting the suit property with the bore well in their property.

3.The first respondent filed written statement and is contesting the suit. Trial commenced. The petitioner filed proof affidavit and was examined in chief and cross examined in part. When the suit was posted for further cross examination of the petitioner as P.W.1, the petitioner filed I.A.No.363 of 2013 under Section 151 of C.P.C for marking the Deed of Land Assignment as Ex.A12 in the suit. According to the petitioner, when the said document was sought to be marked, the respondents objected the

same and therefore, the present application is filed. As per the said Land Assignment Document, the respondents handed over possession of the suit property to the petitioner on receiving the sale consideration. He is claiming relief based on the said document.

4.The respondents filed counter affidavit and contended that they did not execute the Document No.12. The said document is unregistered, insufficiently stamped and fabricated for the purpose of suit and as per Indian Stamp Act and Registration Act, 1908, the said document cannot be marked as evidence and prayed for dismissal of the application.

5.The learned Judge considering the averments in the affidavit, counter affidavit and taking note of the fact that document sought to be marked is conveyance of immovable property of value more than Rs.100/- and is insufficiently marked and unregistered, dismissed the application.

6.Against the said order of dismissal dated 13.02.2014 made in I.A.No.363 of 2013 in O.S.No.164 of 2011, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel for the petitioner contended that an unregistered document can be marked and relied on for collateral purpose. When a party object to the marking of the document, Court has to record the said objection and mark the document subject to the objection and decide the objection after conclusion of trial. This Court and Hon'ble Apex Court in number of judgments have held that a document tendered in evidence cannot be registered without marking the same even if other party object to the said document and relied on the judgment reported in **2010 (5) SCC 401 (S.Kaladevi Vs. V.R.Somasundaram and others)**.

8.Heard the learned counsel for the petitioner as well as the respondents 1 and 3 and perused the materials available on record.

9.All the contentions of the learned counsel for the petitioner are without merits in the facts and circumstances of the present case. The document sought to be marked is insufficiently stamped and it is not a registered one. A reading of the said document in the typed set of papers shows that it is a sale deed by which respondents have alleged to have sold the property to the petitioner

for a sum of Rs.1,60,000/- and handed over the possession to the petitioner. In view of the recital in the said document, it has to be stamped as per the provisions of the Indian Stamp Act and it is compulsorily registrable as per the Registration Act, 1908. The Division Bench of this Court in "**(2001) 1 MLJ 1 (Ac. Lakshmipathy and another Vs. A.M.Chakrapani Reddiar and five others)**" has held that unstamped and unregistered document cannot be relied on even for collateral purpose.

10. In the Civil Revision Petition, the learned counsel for the petitioner contended that the petitioner is seeking to rely on the said document only for collateral purposes. The petitioner, before the Trial Court in the affidavit has stated that he is claiming the relief in the suit based on the said document. Considering the averments made in the affidavit filed in the said application, the learned Judge has held that petitioner is relying on the said document for main purpose. This Court and Hon'ble Apex Court has held that when an objection is raised by a party with regard to stamp duty, the Court has to decide the issue before marking the document. The learned Judge has considered all the facts and law in proper perspective and dismissed the application. It is pertinent to

note that petitioner filed suit for permanent injunction against the respondents and the suit is not for declaration of title. In such circumstances, it is for the petitioner to prove his possession to get the relief prayed in the suit.

11. For the above reason, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.03.2018

Index :: Yes
gsa

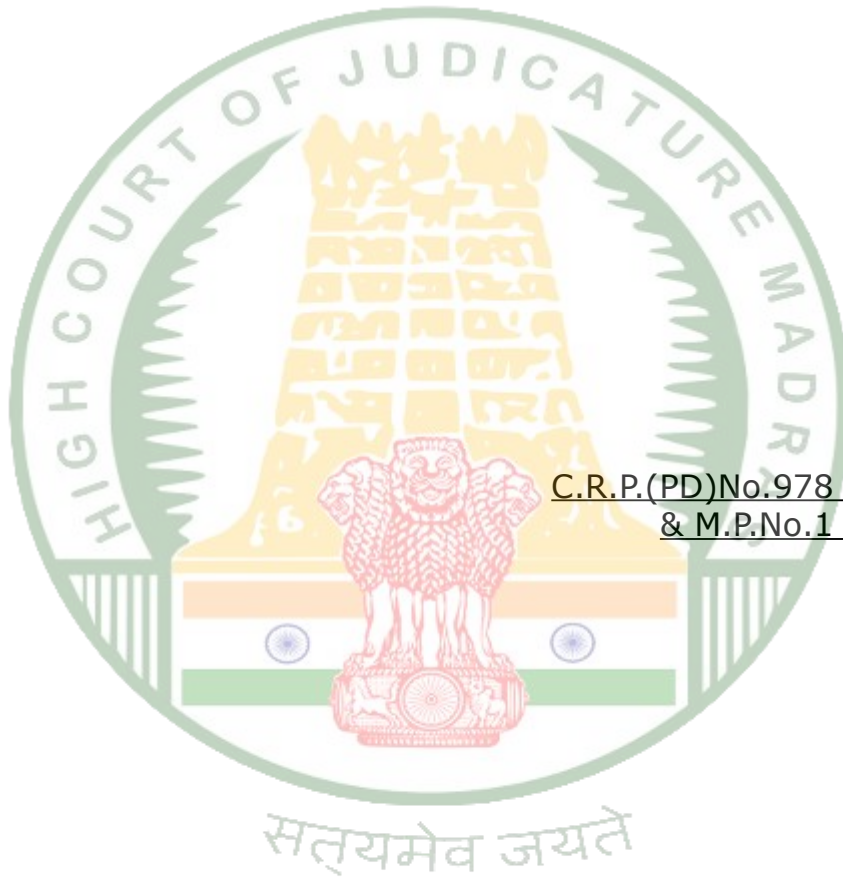
To

The II Additional District Munsif,
Bhavani.

सत्यमेव जयते
WEB COPY

V.M.VELUMANI,J.

gsa



C.R.P.(PD)No.978 of 2014
& M.P.No.1 of 2014

WEB COPY

26.03.2018