IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) No.1815 of 2016
and
CMP No.9490 of 2016

Vasantha Ammal ... Petitioner

Versus

Gunasekaran ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order, dated 27.04.2016 passed in I.A. No.353 of 2016 in O.S. No.576 of 2005 on the file of the 1st Additional District Munsif Cuddalore and allow this Civil Revision Petition.

For petitioner : Ms. Abirami
For respondent : Mrs.G.Sumithra for M/s. I. Abrar Md. Abdulla

ORDER

The respondent/plaintiff has filed the suit in O.S. No.576 of 2005 on the file of Additional District Munsif Court, Cuddalore for partition and separate possession claiming 1/3 rd share of the suit property and to pass final decree. During the course of trial, an unregistered release deed dated 24.09.1991 has been marked on the side of the defendant and it was opposed by the plaintiff by filing a Memo to impound the said Release deed dated 24.09.1991 on the ground that the release deed is a ranked forgery. The memo filed by the respondent / plaintiff has been rejected by the Court below, as against which CRP 2549 of 2007 was filed by the plaintiff and it was dismissed by this Court with a direction to file a petition before the Court below. Thereafter, the defendant has filed three petitions in I.A. Nos. 181, 182 and 184 of 2013 for marking certain documents through DW2 and they were also dismissed by the trial Court. Challenging the dismissal order, the defendant has filed CRP Nos.1798 to 1800 of 2013 and the aforesaid revision petitions were allowed by this Court on 09.12.2013. Thereafter, the petitioner/defendant filed I.A. 260 of 2014 to send the unregistered release deed dated 24.09.1991 to determine the stamp duty penalty in order to mark the same for collateral purpose and the Court below has allowed the said application to pay the stamp duty and penalty. Accordingly, the petitioner/defendant has also paid the stamp duty and penalty and the said release deed was also marked as Ex.D28. Thereafter, the plaintiff/respondent herein has filed I.A. No.353 of 2016 under Order XIII Rule 3 of CPC to reject the document marked as Ex.D28 as it is inadmissible in evidence. The said application was allowed and therefore, the petitioner has filed the present Civil Revision Petition before this court.

2. According to the learned counsel for the petitioner, the unregistered release deed dated 24.09.1991 was marked as Ex.D28 during the course of

trial after the value of the document has been assessed and the assessed amount has also been paid by the petitioner/defendant. Therefore, at this stage, the trial Court ought not to have allowed the application filed by the respondent to reject the document which was already marked during the course of trial. Therefore, the order passed by the trial court is contrary to the provisions contained under Order XIII Rule 3 of CPC and she prayed for setting aside the order of the court below.

3. Per contra, the learned counsel for the respondent submits that the application filed by the respondent for rejecting the unregistered release deed was rightly considered by the court below by considering the fact that the said document has been marked for collateral purpose for a collateral transaction. In such view of the matter, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petition.

4. Heard counsel for both sides and perused materials on record. The defendant/petitioner herein has earlier filed an application to mark the unregistered release deed dated 24.09.1991. Since it was an unregistered document, it was sent to the District Collector to assess the value of the same together with penalty. The value, so assessed, was also paid by the petitioner together with penalty and thereafter, the document was also marked as Ex.D28 during the course of trial. The plaintiff/respondent did not question the

order passed by the court below directing the competent authority to assess the value of the document or he has not questioned the same at the time, when the document was marked as Ex.D28. Therefore, when once a document has been marked, either with or without objection, the trial Court has allowed the application and to pass an order to unmark such document is unsustainable in law. The ratio laid down by the Division Bench of this Court in the case of **Lakshmipathy and another versus A.M. Chakrapani Reddiar** reported in **2001 (1) CTC P112** wherein, this Court has held as under :

> *39. The next question is whether in view of the fact that the appellant himself produced the document before Court along with the plaint, is to be taken that the appellant cannot object to for the admission of the document, so also to look into the contents of the document. It may be straight away said that the settled legal position is that if acting on the admission of execution, the document is admitted and looked into then it would amount to acting upon the unstamped document which will be violative of Section - 35 of Indian Stamp Act.*

5. In the light of the aforesaid facts and the decision cited supra, the order passed by the Court below has to be set aside. At the same time, it is observed that it is open to the plaintiff/respondent to raise all his objections as to the validity of Ex.D28 marked in the suit at the time of final hearing of the suit. Accordingly, the order passed by the Court below stands set aside and the Civil Revision Petition is allowed. No costs. The Court below is directed

to dispose of the suit as expeditiously as possible on or before 30.06.2018. Consequently, connected miscellaneous petition is also closed.

23.02.2018

Index : Yes/No

Internet : Yes / No

Speaking/Non Speaking

vsi2

D.KRISHNAKUMAR, J.

vsi2

To

The 1st Additional District Munsif Cuddalore

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