

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.Nos.972 & 1166 of 2013
and M.P.No.1 of 2013

Chinnaswamy

.. Petitioner
in both CRPs

Vs

Rajendran

.. Respondent
in both CRPs

Common Prayer:-

Civil Revision Petitions are filed under Article 227 of the Constitution of India praying to set aside the orders dated 31.10.2012 in I.A.No.967 of 2012 & I.A.No.969 of 2012 in O.S.No.11 of 2002 on the file of the District Munsif Court, Tirupattur.

For Petitioner : Mr.T.S.Venkateshan

for Mrs.P.Veena in both CRPs

For Respondent : Mr.PA.Sudesh Kumar in both CRPs

COMMON ORDER

Challenging the fair and final orders dated 31.10.2012 passed in I.A.No.967 of 2012 & I.A.No.969 of 2012 in O.S.No.11 of 2002 on the file of the District Munsif Court, Tirupattur. the plaintiff has filed the above Civil Revision Petition.

2. The learned counsel appearing for the petitioner submitted that I.A.No.967 of 2012 was filed seeking permission to allow the Petitioner to pay the deficit court fee with regard to the unregistered Release deed and to mark the document and I.A.No.969 of 2012 was filed seeking permission to mark the unregistered muchalika (release deed). The Court below, after considering the submissions made on the above I.As., dismissed both the petitions on 31.10.2012, against which, the petitioner in the above Interlocutory Applications/defendant, has preferred the present Civil Revision Petitions.

3. The learned counsel for the Revision Petitioner/defendant submitted that they filed I.A.No.968 of 2012 seeking to recall D.W.3 for marking of unregistered muchalika and the said petition was also dismissed by the court below on 31.10.2012. Challenging the same, CRP.No.1165 of 2013 was filed before this court and this court dismissed the said CRP.No.1165 of 2013 on 17.04.2013.

4. The learned counsel for the petitioner/defendant submitted that in the case on hand, the father of the petitioner and the respondent has executed settlement deed in favour of the respondent-plaintiff on 28.01.1991 by way of registered settlement deed and on the same day the respondent-plaintiff has executed Muchalika in favour of his father's name stating that based on the registered settlement deed, he will not claim any share in his father's property in future and relinquished all the rights, interest and title in his father's property. It is also submitted that for execution of settlement deed and muchalika, the stamp papers were purchased from the same vendor on the same day and therefore it is necessary to impound the said document for the purpose of duly stamped and thereafter, send it for registration before the Sub Registrar Office. He also submitted that even without going for the registration, the said document can be marked as evidence. In this regard, the learned counsel for the petitioner/defendant referred to a judgment of Hon'ble Supreme Court reported in (2016) 8 Supreme Court Cases 705 [Subraya M.N. Vs. Vittala M.N., and others], wherein, in paragraphs 15 and 16, it is held as follows:-

" 15. Under Section 17 of the Registration Act, the documents which purport to create, declare, assign, limit or extinguish any right, title or interest of the value of one hundred rupees and upwards, are to be registered. Under section 49 of the Registration Act no document required by Section 17 or by any provision of the Transfer of Property Act to be registered shall be received as evidence of any transaction affecting an immovable property. As provided by Section 49 of the Registration Act, any document, which is not registered as required under the law would be inadmissible in evidence and cannot therefore be produced and proved under Section 91 of the Evidence Act.

16. Even though recitals in Ext.D-22 are to the effect of relinquishment of right in items 1 and 2, Ext.D-22 could be taken as family arrangements/settlements. There is no provision of law requiring family settlements to be reduced to writing and registered, though when

reduced to writing the question of registration may arise. Binding family arrangements dealing with immovable property worth more than rupees hundred can be made orally and when so made, no question of registration arises. If, however, it is reduced to the form of writing with the purpose that the terms should be evidenced by it, it required registration and without registration it is inadmissible; but the said family arrangement can be used as corroborative piece of evidence for showing or explaining the conduct of the parties. In the present case, Ext.D-22 panchayat resolution reduced into writing, though not registered can be used as a piece of evidence explaining the settlement arrived at and the conduct of the parties in receiving the money from the defendant in lieu of relinquishing their interest in items 1 and 2".

5. The learned counsel for the Petitioner/defendant specifically pointed out the principles laid down in the above judgment with regard to Effect of Relinquishment of Rights which could be taken as family arrangements/settlements; there is no provision of law requiring family settlements to be reduced to writing and registered; if however it is reduced to the form of writing with the purpose that the terms should be evidenced by it, it required registration and without registration it is inadmissible; but the said family arrangement can be used as corroborative piece of evidence for showing or explaining the conduct of the parties.

6. Relying on the above said judgment, the learned counsel for the Petitioner/defendant argued that in the present case also, even without invoking document, Muchalika can be used as a corroborative piece of evidence for showing or explaining the conduct of the parties at the time examination of defendant witness.

7. On the other hand, the learned counsel for the respondent/Plaintiff vehemently opposed the Revision Petitions and submitted that the document cannot be impounded and sent for registration and DW3 also should not be recalled. However, the learned counsel for the respondent submitted that it is well established principles that unregistered document can be used as corroborative piece of evidence for showing or explaining the conduct of the parties at the time of defendant witness.

8. After considering the submissions raised on both sides and on a perusal of the records and order passed by the lower

Court in I.A.Nos.965, 967 and 969 of 2012 and also taking into consideration the principles laid down in the judgment passed by the Hon'ble Supreme Court in the above cited decision [(2016) 8 Supreme Court Cases 705], this Court is of the view that muchalika need not be marked but the same can be used as corroborative piece of evidence for showing or explaining the conduct of parties at the time of cross examination of defendant side witness. So it is open to the plaintiff to cross examine the defendant witness about the sanctity of the document. It is for the Court to decide as to whether to consider the muchalika as a corroborative piece of evidence at the time of passing orders in the suit, after examination of all evidence.

9. With these observations, CRP.No.1166 of 2013 is disposed of. In view of the above discussion in respect of prayer sought for the purpose of marking of muchalika at the time of defendant witness, there is no need to pass any orders in CRP.No.972 of 2013 seeking to pay deficit stamp duty. Therefore CRP.No.972 of 2013 is dismissed and the lower court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

dpq

To

The District Munsif Court,
Tirupattur.

+1cc to Mrs.P.Veena, Advocate, S.R.No.45505

C.R.P.Nos.972 & 1166 of 2013
and M.P.No.1 of 2013

GMR (CO)
CS/06/08/18