



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.04.2018

DELIVERED ON : 29.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (NPD) No.488 of 2018

and

CMP(MD) No.2153 of 2018

1.M.Ravikumar

2.Avudai Thangam

.. Petitioners/ Petitioners/
Defendants 2 & 8

vs

1.N.Muniyandi

... 1st Respondent/ 1st Respondent/
Plaintiff

M.Muniyandi Pillai (died)

M.Senthil (died)

2.M.Balamurugan (deleted)

3.Amsavalli @ Poongothai (deleted)

4.M.Muthuvel (deleted)

5.M.Saroja (deleted)

6.Amsavalli @ Poongothai

7.S.Logambal (Exparte) ... (Defendants 4 to 7 are Exonerated)

8.M.Muthuvel

9.M.Saroja

10.S.Krishnaveni

.. Respondents 2 to 10/
Respondents 4 to 12/ Defendants 1 to 12

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 19.02.2018 made in I.A.No.42 of 2018 in O.S.No.300 of 2003 on the file of the Sub-Court, Periyakulam.

For Petitioners : Mr.R.Suriyanarayanan

For Respondents : Mr.K.Appadurai (for R1)

**ORDER**

This revision has been filed by the petitioners against the order dated 19.02.2018 passed in I.A.No.42 of 2018 in O.S.No.300 of 2003 on the file of the learned Sub-Court, Periyakulam, dismissing the petition filed by the petitioners under Section 65 of the Indian Evidence Act read with Section 151 CPC seeking not to mark the deed of partition dated 11.8.1996.

2. The petitioners are defendants 2 and 8 and the 1st respondent is the plaintiff in the suit. The plaintiff has filed the suit for declaration to declare that the suit property absolutely belong to the plaintiff and in consequence thereof, directing the defendants 1 to 5 to deliver possession of the suit property after removing all structures put up in the suit property, if they fail to do so, the same through Court. The plaintiff had also sought an alternate prayer that if the Court comes to the conclusion that the defendants 6 and 7 had no saleable interest in the suit property directing them to pay Rs.1,19,000/- being the sale price of the suit property with 12% interest from the date of the suit.

3. Pending suit, the defendants 2 and 8 have filed petition under Section 65 of the Indian Evidence Act and Section 151 of CPC praying not to mark the xerox copy of the partition deed dated 11.8.1996 produced by the plaintiff alleging that the 1st defendant and the 11th defendant have entered into a partition on 11.8.1996 in respect of the suit property and other properties. The defendants 2 and 8 have filed their objection to the Memo filed for production of the partition deed. In the meanwhile, the plaintiff had filed his proof affidavit, wherein he had stated that the document dated 11.8.1996 was named as partition list and when the plaintiff was trying to mark the said document as exhibit, they have objected the same. Hence, the defendants 2 and 8 have filed the present petition seeking to dismiss the Memo filed by the plaintiff and also directing to order that the xerox copy of the partition deed dated 11.8.1996 was inadmissible document. According to the defendants 2 and 8, when it was not proved that the original partition deed dated 11.8.1996 was in existence, the xerox copy of the same cannot be marked as secondary evidence. There was also no explanation as to why the second partition deed was written when the first partition deed was existing. According to the defendants 2 and 8, since the partition deed dated 11.8.1996 was not registered, the same cannot be marked in the suit. Taking advantage of the post held by the 11th defendant, he had obtained patta in his wife name, viz., the 12th defendant. Without complying with the provisions of Order 11, Rule 16 of CPC, the plaintiff has no right to mark the xerox copy of the partition deed dated 11.8.1996. Hence, prayed not to mark the xerox copy of the partition deed dated 11.8.1996 as exhibit in this case.



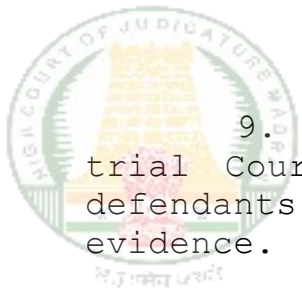
4. Resisting the petition, the 1st respondent filed counter stating that the defendants 11 and 12 have sold the property to the 1st respondent through their power agent. Arumugam Pillai and Muthuchamy Pillai had orally divided the suit properties among themselves. 12th defendant is the daughter of Muthuchamy Pillai. Muthuchamy Pillai's sons Rajareeham and Rajaboopathy had settled part of the property in S.No.1041/1 upon the 12th defendant. Muthuchamy Pillai had three sons viz., 1st defendant, 11th defendant and Santha Pillai and they had orally partitioned the property during 1996. On 11.8.1996, they had written a partition list and in that partition list, 11th defendant was given a part of S.No.1041/1. Both the defendants 11 and 12 have executed a power of attorney in favour of Chellaiah Pillai and the power agent Chellaiah Pillai sold the property to the plaintiff. It is stated that the plaintiff had given notice to the defendants to produce the original partition list and the defendants 2 and 8 have filed their objection stating that they did not have such partition list. Order 11, Rule 16 of CPC will not apply to the present case and prayed for dismissal of the petition.

5. Upon consideration of the oral and documentary evidence, the trial Court dismissed the petition. Aggrieved by the same, the defendants 2 and 8 have filed the present revision.

6. I heard Mr.R.Suriyanarayanan, learned counsel for the petitioners/defendants 2 and 8 and Mr.K.Appadurai, learned counsel for the 1st respondent/plaintiff and also perused the materials available on record.

7. Assailing the order of the trial Court, the learned counsel for the petitioners submitted that the trial Court omitted to exercise its jurisdiction, which was vested in it by law and thereby caused miscarriage of justice and therefore, interference of this Court is warranted. He would submit that the trial Court failed to see that the bare reading of the alleged partition deed dated 11.8.1996, which creates right to the parties therein, relating with the schedule therein and therefore, it requires registration as per Section 17 of the Indian Registration Act and therefore, it is inadmissible in evidence. Without considering the same, the trial Court wrongly observed that there is no reference that the partition was effected on that date and dismissed the petition, which is illegal.

8. Reiterating the order of the trial Court, the learned counsel for the 1st respondent submitted that the trial Court was right in dismissing the petition and there is no need to interfere with the order of the trial Court. He would further submit that despite notice for production of the document dated 11.8.1996, the defendants 2 and 8 failed to produce the same.



9. The point that arises for consideration is whether the trial Court was right in dismissing the petition filed by the defendants 2 and 8 to reject the document dated 11.8.1996 in evidence.

10. The grievance of the petitioners is that on the top of the document dated 11.8.1996, it has been written as partition deed. Without producing the original deed dated 11.8.1996, the xerox copy of the same cannot be marked as exhibit as the same was not duly stamped.

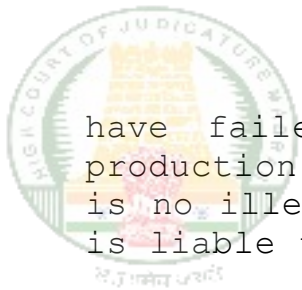
11. On the other hand, it is the say of the 1st respondent that the document dated 11.8.1996 is not the partition deed as alleged by the defendants 2 and 8 and it is only a partition list. If the said document was marked as exhibit on the side of the 1st respondent no prejudice would be caused to the defendants 2 and 8.

12. The copy of the document in question has been produced before this Court. On a perusal of the same, it is seen that on the top of the document, it has been stated as "partition deed", however, through the said document, the parties mentioned therein have not divided the properties among themselves. The recital of the document in question 11.8.1996 shows partition list. As per the pronouncement of this Court, partition list is to be received in evidence. However, whether the xerox copy of the same was liable to be received in evidence is the question.

13. In the case on hand, the 1st respondent had given a Memo to the defendants to produce the document dated 11.8.1996, but the other defendants have failed to produce the same. Serving Memo to the defendants for production of the document in question has not been denied. Therefore, when the defendants have failed to produce the document dated 11.8.1996, naturally, the 1st respondent is entitled to mark the xerox copy of the same as secondary evidence in the facts and circumstances of the given case. As stated supra, the document in question dated 11.8.1996 is not a partition deed as alleged, but it is only a partition list.

14. As rightly held by the trial Court, if the defendants have any objection over the marking of xerox copy of the document dated 11.8.1996, the trial Court can make a note of such objection and mark the document tentatively as an exhibit in the suit and said objection can be decided at the last stage of the final judgment. If the trial Court finds at the final stage that the objection so raised is sustainable, the trial Judge can keep such evidence excluded from consideration.

15. It is to be mentioned that in the plaint, the 1st respondent had stated that the document in question dated 11.8.1996 is a partition list. In such circumstances, there was no harm in marking the xerox copy of the said document, as the defendants



have failed to produce the original despite serving Memo for production of the original. Therefore, this Court finds that there is no illegality in the order of the trial Court and the revision is liable to be dismissed.

16. In the result:

(a) This Civil Revision Petition is dismissed by confirming the order passed in I.A.No.42 of 2018 in O.S.No.300 of 2003 dated 19.02.2018;

(b) The learned Sub-Judge, Periyakulam is directed to take up the suit in O.S.No.300 of 2013 on day-to-day basis without giving any adjournment to either parties and dispose of the same within a period of two months from the date of receipt of a copy of this order. Both the parties are directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Periyakulam.

+1CC TO Mr.K.APPADURAI, Advocate, Sr No.81333

order made in
C.R.P. (MD) (NPD) No.488 of 2018
and
CMP (MD) No.2153 of 2018
29.08.2018

vsv

NM/SV/SAR-2/16.11.2018/5P.3C