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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.09.2018

DELIVERED ON : 23.10.2018

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.R.P. (NPD) (MD) No.698 of 2015

and

M.P. (MD) No.1 of 2015

1.Balamurugan  
2.Perumal Raja  
3.Arul Kumar  
4.Vauki

.. Petitioners/Respondents/Plaintiffs

Vs.

1.Lakshmiammal  
2.Marimuthu  
3.Mareeswari

.. Respondents/Petitioners/Defendants

**Prayer :** This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 09.02.2015 in I.A.No.563 of 2014 in O.S.No.79 of 2014 on the file of the District Munsif Court, Theni.

For Petitioners

: Mr.N.Mohan

For Respondents

: Mr.R.Suriya Narayana

ORDER

Heard Mr.N.Mohan, learned counsel appearing for the petitioners and Mr.R.Suriya Narayana, learned counsel appearing for the respondents.

2.This petition has been filed to set aside the fair and decreetal order dated 09.02.2015 in I.A.No.563 of 2014 in O.S.No.79 of 2014 on the file of the District Munsif Court, Theni.

3.The petitioners herein are the plaintiffs and the respondents herein are the defendants herein in the suit. The petitioners have filed a suit in O.S.No.79 of 2014 for a prayer of permanent injunction. The respondents filed a petition in I.A.No.563 of 2014 for rejection of Ex.A1 and the trial Court has allowed the petition. Against the order, the petitioners have filed the present petition.

4.On the side of the petitioners, it is stated that the document in dispute is Ex.A1, which is an unregistered partition deed and that the only reason for rejection of the document is that the document is a unregistered one and that even an unregistered and unstamped document can be entertained.



5.The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of Radha Ammal (Died) and others v. Manthi Reddiar reported in (2008) 8 MLJ 619, which reads as follows:

"Petition for rejection of documents in question tendered in evidence at the time of trial by defendants - impugned order of Court below allowing petition- revision petition-rejection of documents had arisen only by fact that they are photo copies and therefore cannot be received in evidence-there is no merit in such a contention."

6.The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of Durai @ Subrayan v. Anandan reported in 2010 (1) MWN (Civil) 534, which reads as follows:

"Unregistered and unstamped sale deed-can be looked into to establish nature of possession, even if same is not admissible in evidence-in view of Proviso to Section 49, unregistered document can be received as evidence of any collateral transaction-document reciting delivery of possession does not require any registration."

7.The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of Muniappa Gounder v. P.Dhanasekaran reported in 2015 (1) CTC 363, which reads as follows:

"Unregistered Partition deed sought to be relied upon by plaintiff only to prove a collateral issue, I.e., possession of property by plaintiff's father -said deed marked by trial Court-held, mere marking or admitting of document would not mean that same is accepted by Court-plaintiff in suit to duly prove document before Court-in instant case, marking of unregistered partition deed by trial Court for collateral purpose, upheld"

8.The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of Venkatasubramaniya Chettiyar (Died) and others v. Perumal Chettiar and others reported in 2012 (3) CTC 160, which reads as follows:

"Unregistered partition deed could be looked into for collateral purpose of proving division in status and subsequent separate enjoyment of parties, in a suit for partition-trial Court was not correct in rejecting unregistered partition deed, under which properties were divided."

9.The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of S. Kaladevi v. V.R.Somasundaram and Others reported in (2010) 4 MLJ 529, which reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/> Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as evidence to the contract in a suit for specific performance."



10. The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of Kalaivani and Others v. J. Ramu and 8 Others reported in 2010 (1) CTC 27, which reads as follows:

"At best document can be looked into for collateral purpose provided it is adequately stamped-Opportunity given to mark document by directing payment of deficit stamp duty along with penalty upto date-if penalty is not paid as stipulated, document to be impounded and sent to Collector for taking action under law-Civil Revision Petition allowed."

11. On the side of the respondents, it is stated that only xerox copy of an unregistered and unstamped document is filed by the petitioners. Even the original document is not filed. The petitioners are claiming title over the property through an unregistered and unstamped document. The xerox copy of such document is not document of title. No other document is filed on side of the petitioner. As there is no other document, there is no question of collateral purpose.

12. The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of Muniappa Gounder v. P. Dhanasekaran reported in 2015 (1) CTC 363, which reads as follows:

"Unregistered partition deed-whether admissible in evidence-suit for declaration and permanent injunction-plaintiff in suit relying on settlement deed to prove his claim-unregistered partition deed sought to be relied upon by plaintiff only to prove a collateral issue, I.e., possession of property by plaintiff's father-said deed marked by trial Court-held, mere making or admitting of document would not mean that same is accepted by Court-Plaintiff in suit case, marking of unregistered partition deed by trial Court for collateral purpose."

13. The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of Shalimar Chemical Works Ltd., v. Surendra Oil & Dal Mills (Refineries) & Others reported in 2010 (3) TLNJ 545, which reads as follows:

"Evidence Act 1872-(Marking of photo copies of Exhibits) on further appeal Supreme Court expressed trial Court ought not to have marked xerox copies of exhibits. On a careful consideration of the whole matter, we feel that serious mistakes were committed in the case at all stages. The trial Court should not have "marked" as exhibits the Xerox copies of the certificates of registration of trade mark in face in the objection raised by the defendants."

<https://hcservices.ecourts.gov.in/hcservices/>

14. The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of J. Yashoda v. K. Shobha Rani reported in 2007 (3) CTC 781, which reads as follows:

"If original itself is found to be inadmissible,



party to suit is not entitled to introduce secondary evidence of its contents."

15. Records perused. The burden of proving the case is upon the plaintiff/petitioners. The contention of the petitioners is that there was an oral partition and to prove the partition, the petitioners wanted to file Ex.A1, which is an unregistered and unstamped document. Moreover, the document is a xerox copy. The marking of the document is objected by the respondents. Mere marking of the document does not amount to prove the document. The petitioners have to prove the document by way of oral evidence. This unregistered and unstamped xerox copy can be accepted as a collateral evidence. Whether the document is admissible can be decided at the time of the trial and the validity of this document may be questioned by the respondents by way of cross-examination. The respondents can raise their objections by cross examining the petitioners regarding these points. The trial Court can come to a conclusion as to the admissibility of this documents only after the completion of the trial. At this stage, an opportunity for the petitioners to put forth their case is to be given.

16. In the above circumstances, this Civil Revision Petition is allowed and the order passed by the trial Court is set aside. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-  
Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar(cs-IV)

To

1. The District Munsif Court, Theni.

+1cc to Mr. Mr. R. Suriya Narayana, Advocate in SR.No.91483

C.R.P. (PD) (MD) No. 698 of 2015  
23.10.2018

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