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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.08.2018
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) No.1506 of 2018
and
C.M.P. (MD) No.6540 of 2018

Mari @ Marimuthu

... Petitioner / Petitioner /
Defendant

/Vs./

Ramachandran

...Respondent / Respondent /
Plaintiff

Prayer: Civil Revision Petition - filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.07.2018 made in I.A.No.158 of 2018 in O.S.No.127 of 2015 on the file of the learned Principal District Munsif, Manamadurai, Sivagangai District.

For Petitioner	: Mr.G.Gomathi Sankar
For Respondent	: Mr.T.K.Gopalan for Mr.V.Palani

ORDER

The defendant is the revision petitioner herein. The respondent filed a suit in O.S.No.127 of 2015 on the file of the Principal District Munsif Court, Manamadurai seeking the relief of permanent injunction. The defendant filed I.A.No.158 of 2018 to mark the sale deed said to have been executed by the plaintiff's father in his favour. The said Interlocutory application was dismissed by the Court below by order dated 04.07.2018. The correctness of the said order is challenged in this Civil Revision Petition.

2. Heard the learned counsel on either side.

3. The learned counsel appearing for the respondent contended that the suit schedule property is comprised in Survey No.194 / 2 in Vaviyarendhal Village. On the other hand, the document in question pertains to Survey No.194 / 4. That apart, the document purporting to be sale deed requires payment of stamp duty and it is compulsorily registrable. Since for this reason, the document in question is hit by Section 17 of the Registration Act, 1908 r/w Section 49 of the Stamp Act, 1899, the Court below has rightly dismissed I.A.No.158 of 2018. Therefore, he wanted this Court to sustain the impugned order.



4. I am unable to agree with the said submission of the learned counsel appearing for the respondent / plaintiff.

5. As rightly pointed out by the learned counsel appearing for the revision petitioner, even in the written statement, the petitioner has taken a stand that he has not occupied the Survey No.194/2 and he is in occupation of Survey No.194/4. It appears that he has purchased the property comprised in Survey No.194/4 from the father of the plaintiff. In any event, this is his claim. But then, the sale document has not been registered.

6. As held by the Hon'ble Supreme Court reported in 2018 (3) LW 623 [Sita Ram Bhama vs. Ramvatar Bhama], even such a document is admissible for collateral purpose provided the defendant gets the document impounded and pays the stamp duty together with penalty. The relevant portion in paragraph 13 of the above cited case of the Hon'ble Supreme Court reads as under:

"13. After holding the said documents as inadmissible, this Court further proceeded to consider the question as to whether the documents B21 and B22 can be used for any collateral purpose. In the above context the Court accepted the submission of the appellant that the documents can be looked into for collateral purpose provided appellant defendant to pay the stamp duty together with penalty and get the document impounded. In paragraphs 16 and 17 following has been laid down:

16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in Chinnappareddigari Pedd Mutyala Reddy v. Chinnappareddigari Venkata Reddy (AIR 1969 AP 242) has held that the whole process of partition contemplates three phases I.e., severance of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose I.e., severance of title, nature of possession of various shares but not for the primary purpose I.e., division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant - defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark Exts.B21 and B22 for collateral purpose subject to proof and relevance.



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17. Accordingly, the civil appeal is partly allowed holding that Exts.B21 and B22 are admissible in evidence for collateral purpose subject to payment of stamp duty, penalty, proof and relevancy."

Following the law laid down by this Court in the above case, we are of the opinion that document dated 09.09.1994 may be admissible in evidence for collateral purpose provided the appellant get the document impounded and to pay the stamp duty together with penalty as has been directed in the above case."

7. Respectfully following the aforesaid Ruling, this Court is of the view that the impugned order in the civil revision petition cannot be sustained. It stands set aside. Of course, the revision petitioner has to get the document impounded and pay stamp duty with penalty and the revision petitioner can rely on the said document only for the collateral purpose and not for any other purpose. Accordingly, the civil revision petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Principal District Munsif,
Manamadurai, Sivagangai District.

2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+1CC to Mr.G.Gomathi Sankar, Advocate, SR.No.79391

+1CC to Mr.P.THAMBIDURAI, Advocate, SR.No.79472

Order made in
C.R.P. (MD) (PD) No.1506 of 2018
20.08.2018

SM

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