



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.11.2017

DELIVERED ON : 28.03.2018

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (NPD) (MD) No.2302 of 2013

and

M.P. (MD) No.1 of 2013

Perumal : Petitioner / Petitioner / 2nd Respondent
/ 2nd Defendant

vs.

Thillai Sivagami Ammal (Died)

1.Kutralingam

2.Balasubramaniam

3.Muthulakshmi

4.Shanmuga Sundaram

5.Sankara Narayanan

6.Periyasamy

7.Ravi

8.Neelavathi

: Respondents 1 - 8 / Respondents 2 - 9
/ Petitioners / Plaintiffs

9.Arumugam

10.Gomathiammal

11.Subbulakshmi

12.Deiva Sundari

13.Janaki Ammal

14.Meenakshi

15.Seethalakshmi

16.Thamarai Selvi

17.Sundaranandha Valli

18.Sankara Narayanan

19.Deiva Sundari

20.Thiruvannamalai

21.Annalakshmi

: Respondents 9 - 21 / Respondents 10 - 22
/ Respondents 1, 3 to 14
/ Defendants 1, 3 to 14

(Respondents 9 to 21 are given up in this C.R.P., since they were all

remained ex-parte before the trial Court)

PRAYER : Civil Revision Petition filed Section 115 of the Civil Procedure Code, against the order and decree made in I.A.No.312 of 2013 in I.A.No.883 of 2006 in O.S.No.14 of 1987 dated 14.09.2013 on the file of the District Munsif Court, Aruppukottai.

For Petitioner

: Mr.P.Santhoshkumar



For Respondents

: Mrs.Vijayakumari Natarajan
for R.1 to R.8

Given up for R.9 to R.21

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ORDER

This Civil Revision Petition has been filed against the order and decree passed by the learned District Munsif, Aruppukottai, in I.A.No.312 of 2013 in I.A.No.883 of 2006 in O.S.No.14 of 1987 dated 14.09.2013.

2. The facts of the case, in nutshell, are as follows:

2.1. According to the petitioner, he is the second defendant in the suit in O.S.No.14 of 1987, instituted by one Thillai Sivagami Ammal, who is none other than his sister. The suit was filed for the relief of partition of 1/5th share in the suit property and other reliefs, wherein, a preliminary decree was passed in favour of the plaintiff on 27.04.1989. Thereafter, a final decree application in I.A.No.883 of 2006 dated 03.03.2006 was filed by the said Thillai Sivagami Ammal, which was ordered as prayed for and in the meanwhile, a compromise has been entered into between the parties on 03.12.1995, based on which, the petitioner/2nd defendant has filed I.A.No.312 of 2013, seeking to dismiss the final decree proceedings. As the same was dismissed by the trial Court, the petitioner/2nd defendant is before this Court.

3. The learned Counsel for the petitioner would submit that the said Thillai Sivagami Ammal has relinquished her share in the suit property, by receiving a sum of Rs.20,000/- from the petitioner and to that extent, a compromise deed dated 03.12.1995 was also executed between the petitioner and the said Thillai Sivagami Ammal, who is no more. The said Thillai Sivagami Ammal's husband, namely Kutralingam, being one of her legal heirs is now objecting the same and based on his instigation, the final decree application was filed. Without appreciating the said compromise deed dated 03.12.1995 / Ex.R.13, the trial Court has dismissed his petition seeking to dismiss the final decree proceedings and therefore, he prays for quashing the impugned order, by allowing this revision petition.

4. The learned Counsel appearing for the first respondent, on the other hand, would submit that the said Thillai Sivagami Ammal (late) has filed I.A.No.883 of 2006 for final decree, which was objected by the petitioner/2nd defendant, stating that the said Thillai Sivagami Ammal has received a sum of Rs.20,000/- and relinquished her share in his favour. But, the said deed was not a registered one. He would further state that the trial Court, after considering the same, has allowed I.A.No.883 of 2006, thereby, appointed an Advocate Commissioner for dividing the property, which was not challenged and therefore, prays for dismissal of this petition.

5. Heard the learned Counsel appearing on both sides and



perused the documents placed on record.

6. A perusal of the documents would show that the so called compromise deed dated 03.12.1995 / Ex.R.13, was also discussed in the order dated 02.11.2011, made in I.A.No.883 of 2006 in O.S.No.14 of 1987, requesting for passing final decree and for appointing Advocate Commissioner, wherein, the trial Court has appointed an Advocate Commissioner for dividing the property. In the said order dated 02.11.2011, it was clearly held that Ex.R.13 was neither stamped as per the requirement under Section 35 of Stamp Act nor registered as required under Section 17 of Registration Act. Moreover, the attesting witness was also not examined.

7. After the death of Thillai Sivagami Ammal, the petitioner herein has filed I.A.No.312 of 2013 in I.A.No.883 of 2006 in O.S.No.14 of 1987, praying to dismiss I.A.No.883 of 2006, based on Ex.R.13/compromise deed dated 03.12.1995, which was objected by Thillai Sivagami Ammal's husband / first respondent herein.

8. It is also seen that the petitioner had miserably failed to prove that the compromise deed dated 03.12.1995 was executed with the consent of the respondents. Moreover, the deed was not executed as per the provisions of law, i.e., It is neither registered nor stamped.

9. Admittedly, the application is filed after the death of the said Thillai Sivagami Ammal and the suit is of the year 1987. If compromise deed has been effected, then the said Thillai Sivagami Ammal would have withdrawn the suit. When the compromise deed is disputed, order has to be passed based on merits of the case only.

10. Under such circumstances, this Court is of the view that the order of the trial Judge does not warrant any interference.

11. In result, this Civil Revision Petition is dismissed, as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To

The District Munsif, Aruppukottai.

+1cc to Mr.P.SANTHOSHKUMAR, Advocate, SR.No. 59170

+1cc to Mr.S.NATARAJAN, Advocate, SR.No. 58720

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