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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09..12..2019

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.3418 of 2015
and M.P.No.1 of 2015

1.A.Rajendran

2.R.Sudhakar

... Petitioners /Defendants/Petitioners

-Versus-

1.J.Lakshmi

2.J.Madurai Veeran

3.Mrs.Radha

4.Poongothai

... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 10.09.2014 made in I.A.No.1189 of 2014 in O.S.No.441 of 2011 by the learned District Munsif, Poonamallee.

For Petitioner(s) : Mr.S.Janarthanan

For Respondent(s) : Mrs.C.Harini for RR1 to 4

ORDER

This revision petition is directed against the order of the learned Principal District Munsif, Poonamallee, refusing to receive Doc.No.2 - Letter in favour of A.Jayaraman and Rajendran and Doc.No.5 - FMB in respect of S.No.3 of Karunagaracherri village, Poonamallee Taluk, Tiruvallur District as evidence in O.S.No.441 of 2011.

2. The respondents filed the the above said suit for declaration of title over the suit property based on a registered partition deed dated 03.09.2004 between the husband of the 1st plaintiff namely, Jayaraman Naicker and his brother Veeran Naicker. Pending suit, the petitioner filed an application under Order VIII, Rule 1 (3) of CPC seeking to receive as many as 9 documents. But, the trial court allowed the application only in respect of 7 documents and rejected the



application in respect of 2 other documents as referred to above. Challenging the dismissal portion of the order, the defendants are before this court with this revision petition.

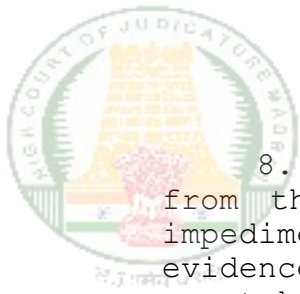
3. I have heard the learned counsel for the petitioners and the learned counsel for the respondents 1 and 2 and also perused the records carefully.

4. According to the petitioner, Doc.No.2 is a consent letter said to have been executed between Jayaraman, Veeran, 1st defendant - Rajendran and Rathinam by which suit property was allotted to the 1st defendant. Since it was an unregistered document, the court below refused to receive the same on file for the purpose of marking in evidence on behalf of the defendants. So far as Doc.No.5 - FMB in respect of the suit property is concerned, the court below rejected the same on the ground that it was issued by an incompetent person in the revenue department.

5. The learned counsel for the petitioner would submit that so far as Doc.No.2 is concerned, it is the consent letter and it would be used only for collateral purpose and therefore, the question of registration would not at all arise. So far as Doc.No.5 is concerned, it is a document showing the measurement of the suit schedule property as per the records maintained by the revenue authorities and receiving the same on file for the purpose of marking in evidence would no way cause any prejudice to the plaintiffs.

6. Per contra, the learned counsel for the respondents would contend that the petitioners claim right over the suit property based on Doc.No.2 which is an unregistered document and therefore, the trial court was right in refusing to receive the same on file for the purpose of marking the same as evidence on the side of the defendants.

7. Doc. No.2 dated 10.03.1993 said to have been executed between Jayaraman, the husband of the 1st plaintiff, the father of the other plaintiffs and one Veeran, the one of the brothers of Jayaraman is styled as 'consent letter'. A perusal of Doc.No.2 would go to show that a portion of the suit property was said to have been given to the 1st defendant by way of partition. The petitioners claim right over the suit property by virtue of the alleged consent letter which is an unregistered document. The petitioner cannot make any claim or right over the immovable property under an unregistered document. Therefore, in the considered opinion of this court the court below was right in refusing to receive Doc.No.2 on file for the purpose of marking in evidence.



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8. So far as Doc.No.5 FMB is concerned, it is an extract from the revenue record and as such there would not be any impediment in receiving the same for the purpose of marking in evidence. The only ground on which it was not accepted by the court below is that it was issued by the Village Administrative Officer who was not competent to issue such document.

9. At this juncture, the learned counsel for the petitioner submitted that the petitioners, if this court permits the petitioners, they would obtain a certified copy of the FMB in respect of the suit schedule property from the person competent to issue the same and substitute it in the place of Doc.No.2 already filed along with the application which is the subject matter of the revision. The learned counsel further submitted that the petitioners are now willing to pay stamp duty and penalty on Doc.No.2 as per law and therefore, the court below may be directed to receive the same on file and refer the same for impounding and for collection of necessary stamp duty and penalty by following the necessary procedures.

10. In view of the foregoing discussions and the submissions made by the learned counsel for the petitioner, the order of the court below refusing to receive Doc.No.2 and 5 on file for the purpose of marking in evidence on behalf of the defendants is set aside and the court below is directed to receive Doc.No.2 on file and refer the same for impounding and for collection of necessary stamp duty and penalty. The petitioners will pay required stamp duty and penalty on Doc.No.2. On such stamp duty and penalty, the court below shall receive the same on file and permit the defendants to mark the same in evidence in accordance with law. So far as Doc.No.5 is concerned, the petitioners are directed to produce a certified copy of the FMB in respect of suit survey number obtained from the competent person and on such production of the document, the court below shall receive the same on file for the purpose of marking in evidence on behalf of the defendants.

11. In the result, this Civil Revision Petition is disposed of accordingly with the above directions. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



To

The District Munsif,
Poonamallee, Tiruvallur District.

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+1cc to Mr.S.Janarthanan, Advocate Sr.102733

Civil Revision Petition
No.3418 of 2015

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