

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.04.2019

Delivered on : 30.07.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD)No.2230 of 2018

&

C.M.P.No.14025 of 2018

- 1.Dhanna Bai
- 2.Sakku Bai
- 3.K.Uma @ Savithiri
- 4.K.Gayathri
- 5.Susila Bai
- 6.Lakshmi Bai
- 7.Deepak Rao
- 8.Rupa Bai
- 9.L.Mangeshwari
- 10.Kowsalya Bai
- 11.Leela Bai
- 12.Sunil Kumar
- 13.Anil Kumar



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14.K.Subramania Rao

15.Srinivasa Rao

16.K.Gopinath Rao

17.K.Ramachandra Rao

18.K.Bhuvaneshwari

19.Anjali Bai

20.K.Geetha Bai

21.K.Janaki

22.K.Baby

23.Ramya Bai

24.Kubendra Rao

25.Subramania Rao

26.Dannoj Rao

27.K.L.Manjunatha Rao

28.Ragavendra Rao

29.Ganesh Rao

30.Saroja Bai

31.Bhaskar Rao

32.Jaganath Rao

33.Ragavendra Rao



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34.N.Mahesh Rao

35.Usha Bai

36.Atchat Rao

37.S.Arunkumar @ Deepak Rao

38.Subramania Rao

39.China Bai @ Sujaritha

40.Sudha Rani

41.Nirmala Bai

42.Ganesh Rao

43.Shantha @ Shanthi Bai

44.Mangala @ Mangala Bai

45.B.Illangeswaran

...Petitioners

Vs

1.A.Sekar

2.S.Boobalan

3.P.Sivakumar

4.R.Indiran

5.S.Sheik Abdullah

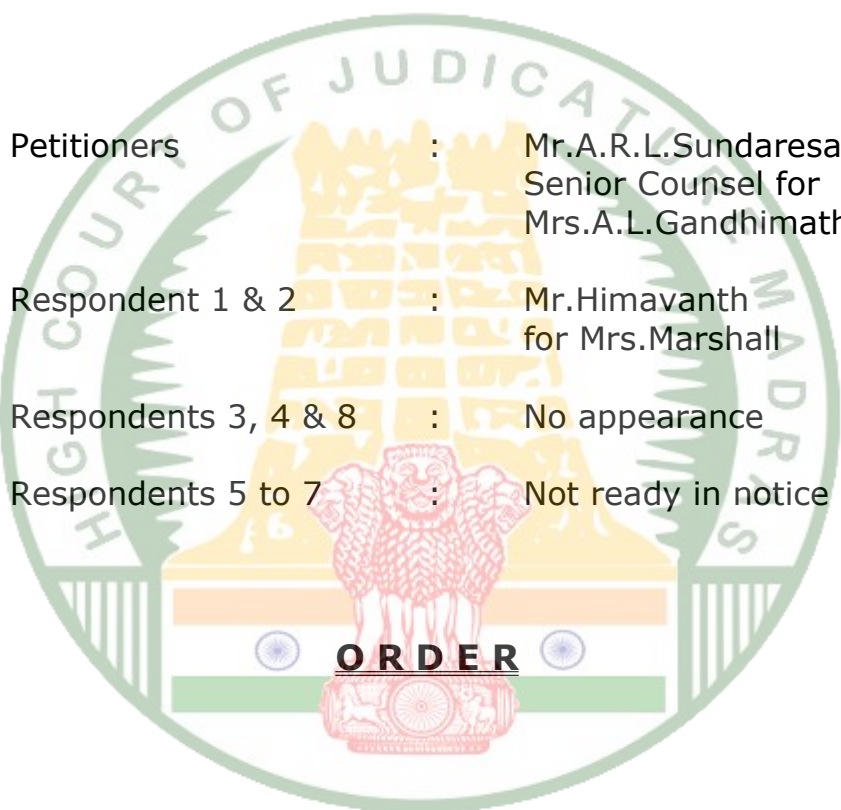
6.P.V.S.Venkatesan

7.G.Thangaraj

8.A.Senthil Murugan

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 17.06.2017 in I.A.No.5 of 2017 in O.S.No.64 of 2015 on the file of the learned Principal District Judge, Krishnagiri.



For Petitioners : Mr.A.R.L.Sundaresan
Senior Counsel for
Mrs.A.L.Gandhimathi

For Respondent 1 & 2 : Mr.Himavanth
for Mrs.Marshall

For Respondents 3, 4 & 8 : No appearance

For Respondents 5 to 7 : Not ready in notice

The plaintiffs are the revision petitioners before this court and the revision is filed challenging the dismissal of an application filed by the plaintiffs in I.A.No.5 of 2017, to send for the original sale deed dated 18.10.2012, registered as document No.2825/2012 on the file of the Special Deputy Collector (Stamp Duty), Salem, to the Court.

2. To have more clarity on the above application, the admitted facts as set out in the pleadings is herein below reproduced.

3. The plaintiffs who are 45 in number, with the 45th plaintiff being the Power Agent of the other plaintiffs, had filed the suit O.S.No.64 of 2015 on the file of the Principal District and Sessions Judge, Krishnagiri, to set aside the sale deed dated 18.10.2012, registered as Document No.2825 of 2012 on the file of the Sub-Registrar Office, Kaveripattanam and cancel the same as being null and void.

4. The basis upon which the suit has been filed is that the plaintiffs 1 to 44 who are the owners of the properties which have been described in the A and B Schedule of the suit schedule property had executed Power of Attorney deeds in favour of the 45th plaintiff on various dates (all of which has been detailed in

the plaintiff), to negotiate and sell the properties to prospective purchasers.

5. The 45th plaintiff had also sold certain properties to defendants 1 to 3 and by reason of which he had become acquainted with them. By reason of this acquaintance, defendants 1 to 3 along with the 4th defendant had approached the 45th plaintiff with an offer to purchase A and B Schedule properties. They had jointly agreed to purchase the A-Schedule property for a total sale consideration of Rs.20,00,000/- and defendants 3 and 4 had agreed to purchase the B-Schedule property for a total sum of Rs.15,00,000/-. The defendants 1 to 4 had informed the 45th plaintiff that they intended to develop the lands into house sites/Industrial sites etc., and sell them to intending purchasers and that the sale consideration would be cleared in due course. Meanwhile, the 5th and 6th defendants who owned small pieces of land and who were close friends of defendants 1 and 2 had also included their property into the

schedule of properties along with the plaintiffs.

6. It was the further case of the plaintiffs that the 45th plaintiff and defendants 1 to 4 had approached an Advocate to draft the sale deeds and the stamp papers were also purchased. The plaintiffs would give details of the stamp papers, the stamp vendor and the denominations as also the documents that had been engrossed on these stamp papers. The plaintiffs would contend that they had retained xerox copies of the said sale deeds and infact on 08.10.2012, the Power Agent was urgently called to the Sub-Registrar Office, Kaveripattanam, to complete the registration formalities and believing that the documents were the same that had been prepared, the Power Agent had signed the said documents. Thereafter, the Power Agent requested the defendants to pay up the sale consideration. However, they started giving evasive replies which created a doubt in the mind of the Power Agent.

7. Meanwhile, some of the land owners had lodged complaint against the 45th plaintiff as well the defendants 1 to 4 stating that they were guilty of land grabbing and the Police of the land grabbing cell had also summoned the 45th plaintiff and made enquiries. During the course of this enquiry, the defendants 1 and 2 had made available the xerox copy of the sale deed which was registered and on perusing the said document the plaintiffs came to realise that the defendants had manipulated the sale deeds and the sale deeds contained several interpolations which included additions and deletions even with reference to the survey numbers and that apart the stamp papers which were produced were not the stamp papers upon which the original sale deeds had been drafted. This coupled with the fact that the payments had not been cleared prompted the plaintiffs to lodge a complaint with the District Registrar, Krishnagiri on 10.07.2013. Unfortunately by order dated 12.08.2013, the District Registrar, Krishnagiri had rejected the said complaint on the ground of

delay. Thereafter left with no other alternative the plaintiffs have come forward with the present suit.

8. The 1st and 2nd respondent had filed a written statement inter alia contending that there is no interpolations or additions in the documents and that the sale deed which is now sought to be cancelled as null and void is pending before the Deputy Collector of Stamps as the same had been under valued. They would further contend that the document was properly registered before the Sub-Registrar, Kaveripattanam with the knowledge of the 45th plaintiff, the Power Agent and all the other plaintiffs. They would further plead that the suit which is filed after a lapse of nearly 2 years and 10 months after the registration as also the rejection by the District Registrar, Krishnagiri is not maintainable. The defendant had come forward with several other defenses and had ultimately submitted that the suit was only a ruse to extort money from the defendants.

9. The 3rd and 4th defendants had also filed a written statement, more or less taking the same defense as the defendants 1 and 2.

10. Pending the suit the plaintiffs have come forward with an application in I.A.No.5 of 2017 (which is the subject matter of the revision) for sending for the original sale deed dated 18.10.2012, registered as document No.2825 of 2012 on the file of the Sub-Registrar Office, Kaveripattanam which was now pending with the Special Deputy Collector (Stamps Duty), Salem. The affidavit filed in support of the said petition would read on the same lines as in the plaint. The plaintiffs would submit that it is only on the production of the original sale deed that the Court could see for itself the forgery, interpolations and other malpractices that had been committed by the defendants.

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11. The plaintiffs have also mentioned that they had taken out an application in I.A.No.367 of 2015 in the suit O.S.No.64 of

2015 to send for the original sale deed dated 08.10.2012, bearing registration No.2825 of 2012 from the Special Deputy Collector (Stamp Duty), Salem. This application was dismissed by order dated 09.03.2016. The said order was taken up on revision to this Court in C.R.P.No.1965 of 2016. The said revision was withdrawn by the plaintiffs with a liberty to file a fresh and comprehensive application containing all details of the interpolations and manipulations made in the document. By order dated 28.09.2016, this Court was pleased to permit the plaintiffs to withdraw C.R.P.No.1965 of 2016 with a liberty to file a comprehensive application before the Trial Court. Pursuant to the said order the applicant had filed I.A.No.5 of 2017.

12. The said application was hotly contested by the defendants and a detailed counter was filed by the 5th defendant. They would object the said application on the ground that the document has not been duly stamped and was therefore inadmissible in evidence and further the same is pending

adjudication for under valuation before the Special Deputy Collector (Stamp duty), Salem. The defendants would reiterate the contents of their written statement and in addition, submit that the 45th plaintiff is already facing a criminal enquiry for offence of cheating and fraud before the Courts at Kerala.

13. They would further contend that the document in question was properly registered and the suit itself filed with a great deal of delay is not maintainable. The other defendants who had filed their counter had more or less adopted the counter filed by the 5th respondent.

14. After an enquiry the learned Principal District Judge, Krishnagiri, dismissed the said application and the dismissal was on the ground that the plaintiffs are seeking to summon a document which has been under valued and not registered and therefore cannot be summoned and looked into. Further the learned Judge also held that despite being called upon to pay the

deficit stamp duty the plaintiffs have not come forward to clear the deficit stamp duty and without doing so they are trying to obtain custody of the sale deed without complying with the orders of the registering authorities.

15. Meanwhile the suit O.S.No.64 of 2015 was dismissed for default. Therefore the revision filed challenging the order in I.A.No.5 of 2017, namely C.R.P.No.3077 of 2017 was dismissed as infructuous by orders of this Court dated 13.09.2017. Thereafter, the plaintiffs have filed I.A.No.206 of 2017 to condone the delay of 22 days in filing the restoration application. The petition was allowed by orders dated 13.03.2018 and this was followed by filing I.A.No.82 of 2018 for restoring the suit. The said application was allowed by order dated 20.06.2018 and the suit O.S.No.64 of 2015 was restored to filed.

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16. Thereafter the plaintiffs have filed the present Civil Revision Petition challenging the order in I.A.No.5 of 2017. An

initial objection was taken by the counsel for the defendants/respondents that this application was not maintainable since no liberty had been obtained by the plaintiffs while withdrawing C.R.P.No.3077 of 2017 on 13.09.2017.

17.The Senior Counsel, Mr.A.R.L.Sundaresan, appearing on behalf of the petitioners would submit that such a liberty was sought for when the revision was being withdrawn and by oversight the same had not been included in the final order. This Court therefore directed them to approach the learned Judge for obtaining necessary orders. Pursuant to this direction it is seen that the petitioners/plaintiffs had made a mention before the learned Judge and the order in C.R.P.No.3077 of 2017 has been amended as per orders of the Court dated 20.03.2019 in C.M.P.No.6809 of 2019 in C.R.P.No.3077 of 2017 in the presence of the counsel for the respondents, giving liberty to the petitioner to approach this Court at the appropriate time. Therefore this Court had proceeded to hear the revision.

18.Mr.A.R.L.Sundaresan, Senior Advocate appearing for the petitioner would submit that the learned Principal District Judge, Krishnagiri, has failed to appreciate the necessity for taking out the application for summoning the original sale deed. The learned Judge has also not understood the implication of the registration of the document and the reference of the document for undervaluation under Section 47-A of the Indian Stamp Act, 1899.

19. He would submit that in view of this misconception the learned Judge has proceeded to hold that the documents being improperly stamped cannot be looked into for any reason as it is inadmissible in evidence. He would further argue that the finding of the learned Judge that despite the demand for payment of the deficit stamp duty, the plaintiffs have failed to make payment as a result of which the document could not be returned and the observation of the learned Judge that the plaintiffs were attempting to get a return of the document without paying the

stamp duty is absolutely erroneous.

20. Mr.Himavanth, learned counsel who has entered appearance on behalf of Mrs.Marshall for the respondents would contend that the very suit itself is highly belated since the plaintiffs were seeking to set aside the sale deed which has been registered as early as in the year 2012 and further the application to call for the document has been moved much later after the filing of the suit and the counsel would contend that the only intent of the petitioners/plaintiffs was to harass the defendants and to protract proceedings.

21. He would submit that the 45th plaintiff who was the Power Agent was kept in the know-how of the entire transaction and he had affixed his signatures only after comprehending the same. The learned counsel would further argue that after signing the document it does not lie in the mouth of the plaintiffs to turn around and contend that the documents have been forged. He

would also argue that since the document has been undervalued the same cannot be admitted in evidence therefore he would submit that there was no infirmity in the order passed by the learned Principal District Judge, Krishnagiri and the same does not require any interference.

Discussion:

22. The suit O.S.No.64 of 2015, which is filed for declaring the sale deed dated 08.10.2012 as null and void is based on the contention that the pages originally signed by the Power Agent has been substituted by the new sheets and that the xerox of the original deed signed by the 45th plaintiff on behalf of the other plaintiffs was engrossed on stamp papers of different serial numbers and the sale deed that is ultimately registered was not the sale deed in which the 45th plaintiff had originally signed.

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23. The plaintiffs had contended that the deed which is now registered contains interpolations, deletions and additions all of

which have not been countersigned by the Power Agent and further the schedule of properties have also undergone changes. In short, it is the contention of the plaintiffs that the document which is now registered as document No.2825 of 2012 dated 08.10.2012 on the file of the Sub-Registrar, Kaveripattanam was not the document signed by the Power Agent, the 45th plaintiff.

24. The truth or otherwise of these allegations and counter allegations can be appreciated by the Court if the original sale deed is summoned and compared with the document No.16, which has been filed by the plaintiff along with the plaint.

25. The objections to the same is on the ground that the same has been undervalued and that the sale deed has been referred to the Special Deputy Collector (Stamp Duty), Salem, under Section 47-A of the Indian Stamp Act so it cannot be summoned and marked. As per Section 49 of the Indian Registration Act, 1908, the documents which require compulsory

registration and which are unregistered cannot be received in evidence. The proviso to the section makes an exception for receiving an unregistered document in evidence of a contract in a suit for specific performance or as evidence of a collateral transaction which does not require to be affected by registered instrument. Section 17 of the Indian Registration Act, 1908, details the various documents which are compulsorily registrable. Section 47 of the Indian Registration Act, 1908, would state that the registered documents on its registration will take effect from the date of execution.

26. Admittedly in the instant case, the sale deed dated 08.10.2012 has been registered and bears registration No.2025 of 2012 on the file of the Sub-Registrar, Kaveripattanam. The document has only been sent to the Special Deputy Collector (Stamp Duty), Salem, for considering the actual value of the property since the registering authorities are of the opinion that the property was undervalued. The reference under Section 47-A

of the Indian Stamp Act, 1899, does not take away the effect of registration. Further the document has been duly stamped as per the value given in the document. The Sub-Registrar has only invoked the provisions of Section 47-A on the ground that the value of the property is much less than the market value. It is not a document falling within mischief of Section 35 of the Indian Stamp Act as being insufficiently stamped.

27. Infact, the procedure that is contemplated under Section 47 (A) of the Indian Stamp Act, 1899 is that where the Registering Officer apprehends that the market value of the property has not been truly set forth he has to first register the instrument and thereafter refer the same to the Collector.

28. In the case on hand the document has been registered and therefore it is not an unregistered document on unstamped document which is inadmissible in evidence. Further on consideration of the suit in question, particularly the allegations

and counter allegations, this Court is of the opinion that the original document should be summoned from the office of the Special Deputy Collector (Stamp Duty), Salem, for comparison by the Presiding Officer.

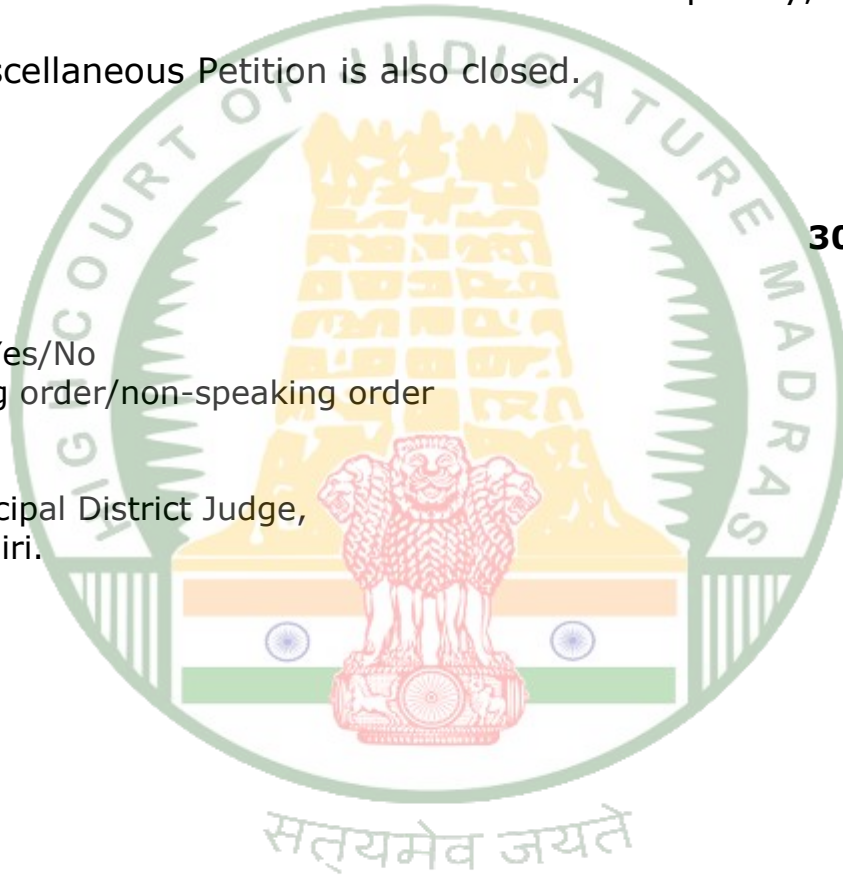
29. The learned Principal District Judge, Krishnagiri, shall appoint an Advocate Commissioner of considerable experience for bringing the document from office of the Special Deputy Collector (Stamp Duty), Salem. On receipt of the original sale deed from the Special Deputy Collector (Stamp Duty), Salem, a xerox copy of the said document shall be taken and each page should be certified by the Presiding Officer and thereafter the original document can be sent back to the office of the said Special Deputy Collector (Stamp Duty), Salem, so as to enable them to proceed with their enquiry. The entire exercise shall be completed within a period of one month from the date of receipt of a copy of this order.

With the above observations, the Civil Revision Petition is allowed and the order passed in I.A.No.5 of 2017 is set aside. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

30.07.2019

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Index : Yes/No
Speaking order/non-speaking order

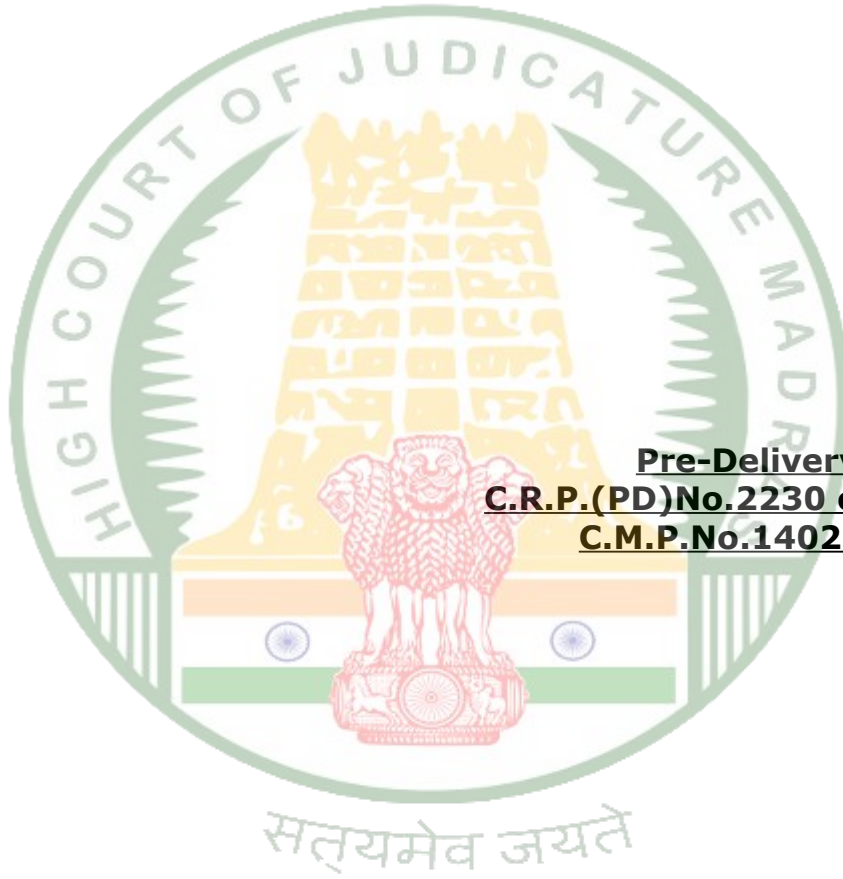
To
The Principal District Judge,
Krishnagiri.



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P.T.ASHA, J.,

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Pre-Delivery order in
C.R.P.(PD)No.2230 of 2018 &
C.M.P.No.14025 of 2018

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