

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.01.2019

Pronounced on : 18.01.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

**CRP.(PD).No.455 of 2017
& CRP.(PD).No.2035 of 2018
and**

C.M.P.Nos.2159/2017 & 12078/2018

In CRP.No.455 of 2017

1.S.Venkatachalam

2.S.Palanisamy

3.V.Balakrishnan

4.V.Jayaprakash

.. Petitioners

V.

1.Kamalathal

2.Punithamani

.. Respondents

सत्यमेव जयते

In CRP.No.2035 of 2018

1.S.Palanisamy

2.V.Balakrishnan

.. Petitioners

V.

1.S.Kamalathal

2.S.Venkatachalam

3.Punithamani

.. Respondents

PRAYER in CRP.No.455 of 2017: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the docket order passed in Memo dated 20.01.2017 made in O.S.No.209 of 2013 on the file of the learned II Additional District Judge, Tiruppur.

PRAYER in CRP.No.2035 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 18.04.2018 made in I.A.No.498 of 2018 in O.S.No.209 of 2013 on the file of the learned II Additional District and Sessions Judge, Tiruppur.

For Petitioners : Mr.S.Mukunth
in CRP.No.455/2017 for M/s.Sarvabhauman Ass.

For Petitioners : Mr.P.Tamilavel
in CRP.No.2035/2018 for M/s.Sarvabhauman Ass.

For Respondent-1 : Mr.R.Bharanidharan
in CRP.No.455/2017 for Mr.V.Anandhamoorthy

For Respondent-2 : No Appearance
in CRP.No.455/2017
& in CRP.No.2035/18

For Respondent-3 : No Appearance
in CRP.No.2035/18

COMMON ORDER

When the petitioners in CRP.No.455 of 2017 had attempted to introduce an unregistered partition cum release deed dated 07.04.1978 in evidence, the first respondent herein/plaintiff had raised her objections through a memorandum, objecting to the marking of the unregistered document dated 07.04.1978 on the ground that the said instrument is impermissible to be admitted in

evidence, in view of Section 17 of the Indian Evidence Act r/w. Section 35 of the Indian Stamp Act, 1899. The said objections were countered by the petitioners herein, stating that a family arrangement does not require registration and the insufficient stamp duty can be cured by payment of penalty and therefore insisted for having the said document marked. The objections raised by the first respondent/plaintiff was sustained through an order dated 20.01.2017, which is impugned in the CRP.No.455 of 2017.

2. Pending the present Civil Revision Petition, the defendants 2 and 3 filed an application in I.A.No.498 of 2018 under Section 45 of the Indian Evidence Act seeking for an expert opinion on the genuinity of the left thumb impression (LTI) in the release deed dated 07.04.1978, which came to be rejected by an order dated 18.04.2018, which is in challenge in CRP.No.2035 of 2018.

3. Since the issue involved in both the Civil Revision Petitions revolves around the validity and admissibility of the release deed dated 07.04.1978, both the civil revision petitions are disposed through a common order.

4. The submissions of the petitioners' counsel in both the civil revision petitions are that the Release Deed dated 07.04.1978 is

permissible in evidence, if the marking of the same, is for a collateral purpose. According to the learned counsel for the petitioners, they intend to mark the document before the trial Court, only for the purpose of establishing their possession over the suit properties and since such the purpose is a collateral one, there is no embargo for having the said document marked in evidence. It is their further submission that since the first respondent herein had denied her signature in the release deed at the time of cross examination, it becomes pertinent to have the opinion of an expert by comparing her signature in the release deed with her admitted signatures. On such grounds, the orders impugned in both the civil revision petitions were challenged.

5.The learned counsel for the first respondent, on the other hand submitted that, through the release deed dated 07.04.1978, the petitioners intend to establish that the first respondent herein had extinguished her right and title over the suit properties. By relying upon the provisions of Section 17 of the Indian Registration Act, 1908, the learned counsel submitted that the release deed cannot be looked into or admitted into evidence.

6.I have given careful consideration to the submissions made by the respective counsels.

7. Since the issue in both the civil revision petitions revolve around the release deed dated 07.04.1978, the recitals therein are briefly extracted hereunder:-

a) The plaintiff is the daughter of Subbia Gounder and Ramathal.

b) The plaintiff is entitled for a share over the properties of Subbia Gounder and Ramathal.

c) Pursuant to the claim of share made by the plaintiff, the plaintiff was paid a sum of Rs.5000/- in the presence of Panchayatars.

d) In consideration of sum of Rs.5000/-, the plaintiff releases her right and title of share over the properties of Subbia Gounder and Ramathal.

e) Henceforth, neither the plaintiff nor her legal representatives shall have any share or relationship in the properties of Subbia Gounder and Ramathal.

f) Henceforth, Subbia Gounder and Ramathal can possess and enjoy their properties without any interruption from the plaintiff.

8. The defendants had produced the original release deed dated 07.04.1978, along with their proof affidavit, which came to be objected through a memorandum filed by the plaintiff questioning

the marking of this document and such objection was sustained by the trial Court.

9.The only ground raised by the petitioners herein challenging the order of the trial Court refusing in marking of the release deed is that they intended to mark the document to prove their possession, which is for a collateral purpose and which is permissible in law.

10.The term “collateral purpose” is a question of fact which depends on the facts and circumstances of each and every case. As such, whether the petitioners intend to mark this document for a collateral purpose would depend on the facts in the present case also.

11.Before addressing the aforesaid proposition, interestingly, this ground of marking the release deed for collateral purpose was not raised as a ground before the trial Court by the defendants in their reply to the objection memorandum.

12.The issue involved in CRP.No.455 of 2017 is answered as follows:-

13. In the memorandum of objections, the plaintiff had stated that the release deed compulsorily requires registration under Section 17 of the Indian Registration Act and since the deed was insufficiently stamped, the same is impermissible to be marked in evidence, in view of Section 35 of the Indian Stamp Act. The petitioners herein had filed a reply to the objection stating that the document dated 07.04.1978 was only a family arrangement of the release deed and as per the settled law, the family arrangement does not require registration. It was further stated in the reply that the deficit stamp duty in the document dated 07.04.1978 is curable on payment of deficit stamp duty and penalty. A further statement was made therein that the defendants are willing to pay the deficit stamp duty and the penalty and therefore, sought for marking the document before the trial Court.

14. As such, the defendants had clearly expressed their intention to have the release deed marked only for the purpose of establishing that the plaintiff had extinguished her right and title over the suit properties. While that being the case, I am unable to comprehend as to how the petitioners herein can now question the legality of the order passed by the trial Court, wherein such a plea

that they intend to mark the document only for collateral purpose, was not taken. Apparently, the trial Court had not addressed such an alleged intention of the petitioners herein. It would not be out of place to mention that such a ground of their intention to mark the release deed for collateral purpose has not been taken in the memorandum of grounds filed in the present CRP.455 of 2017 also and has been made only by way of oral arguments. Though the respondent herein has been taken by surprise on such an unpleaded ground, the counsel for the respondent had chosen to respond to the same.

15. When the petitioners herein had openly expressed that they intend to mark the document only for the purpose of establishing that the first respondent herein had voluntarily extinguished her right, title and shares over the suit properties in view of the release deed executed by her after receiving a compensation, the present stand in the oral arguments, contrary to the stand taken before the trial Court cannot be appreciated. The Civil Revision Petitions is therefore liable to be dismissed on this sole ground alone.

16. Notwithstanding this, since an attempt, has been made during the course of oral arguments, that the release deed is only

intended to be marked for collateral purposes and the same has been countered also, I shall now address this submissions also.

17.It is the case of the petitioners that they had taken the ground of adverse possession in their written statement. In view of such a stand taken, an attempt was made to impress this Court that the document was being introduced for establishing their possession, which is a collateral purpose. I have already extracted the recitals of the release deed in the earlier paragraphs. The sum and substance of the release deed goes to show that in view of a sum of Rs.5000/- being paid, the first respondent/plaintiff had released all her rights, interest and shares in the suit properties. It has been mentioned therein that the Subbia Gounder and Ramathal are at liberty to enjoy and possess the suit properties from the date of the release deed. It is nowhere mentioned in the release deed that the first respondent herein had handed over the possession of the suit properties or that the possession of the sale are with the petitioners herein. When the written statements of these petitioners are read in a whole, it is categorically seen that the rights and title of the petitioners over the suit properties has been denied by them only in view of the release deed allegedly executed by her.

18.This is not the case where the defendants have made a counter claim for declaring their title over the suit properties through adverse possession. On the other hand, they now intend to bring in the question of possession, as a collateral purpose for defeating the relief claimed by the petitioners in view of her extinguished rights over the suit properties. In this background of facts, it cannot be said that the petitioners herein intend to prove their possession for collateral purpose. By a clever usage of terms "collateral purpose", the petitioners cannot use this unregistered document to indirectly defeat the relief sought for by the first respondent herein. To sum up, it can only be said that the issue of possession, in the background and peculiar facts of this case, cannot be termed as one for collateral purpose but rather it can only be said that the petitioners are attempting to achieve their stand indirectly, which they could not achieve directly before the trial Court.

WEB COPY

19.The plea of ouster has also been taken by the respondents in the written statement which itself goes to show that they intend to establish that the first respondent herein had relinquished her rights and shares over the suit properties through release deed.

20.The learned counsel for the petitioners also submitted that the issue as to whether the unregistered release deed is for a collateral purpose or not is an issue pending before the Court below and can be determined only at the time of arguments and that it is pre-mature to decide the same now. I am not in agreement with such an argument advanced. When these petitioners have taken a concrete stand before the trial Court in their reply memorandum and during the course of their arguments while the impugned orders came to be passed, that the release deed is only a family arrangement which does not require registration and is curable by payment of deficit stamp duty and penalty, it can only be said that such an issue need not be gone into by the trial Court at a later stage to determine as to whether the said document is permissible or not.

21.The learned counsel for the petitioners relied upon a judgment of Division Bench of this Court in **A.C.Lakshmipathy and another V. A.M.Chakrapani Reddiar and fiver others** reported in **2001 (1) CTC 112** to substantiate the point that when a family arrangement which is compulsorily registerable is not registered, the same can be looked into by the Court for collateral purposes.

He would also rely upon the decisions reported in **2003 (4) SCC 161 [Bondar Singh and others V. Nihal Singh and others]**, **2000 (2) CTC 230 [M.K.Narayanan and 2 others V. The State of Tamil Nadu rep. by the Assistant Commissioner of Urban Land Tax, Trichy and another]** and **1998 (1) LW 208 [Kousalya Ammal V. Valliammai Ammal and another]** for the same proposition. There is no quarrel about this proposition. But I do not intend to go into these propositions laid down for the reason that this Court has rendered a finding that the unregistered release deed was not intended to be brought in for collateral purpose and as such, the ratio laid down in these judgments may not be of any help to the petitioners.

22.The challenge in CRP.No.2035 of 2018 is the rejection of the petitioner's application seeking for an expert opinion on the Left Thumb Impression of the first respondent in the unregistered release deed. Now that, this Court has found that the release deed itself is impermissible to be introduced as a documentary evidence, the exercise of subjecting the Left Thumb Impression therein for an expert opinion would only be a futile exercise. As such, the order passed in this Civil Revision Petition also does not require any interference.

23. For all the foregoing reasons, I am constrained to hold that there are no infirmities in the orders under challenge in both the Civil Revision Petitions. Accordingly, both the Civil Revision Petitions stand dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

18.01.2019

Index : Yes

Order : Speaking

DP

To

1. The II Additional District
and Sessions Judge, Tiruppur.

2. The II Additional District Court,
Tiruppur.

WEB COPY

M.S.RAMESH, J.

DP



Order made in

**CRP.(PD).No.455 of 2017
& CRP.(PD).No.2035 of 2018
and**

C.M.P.Nos.2159/2017 & 12078/2018

WEB COPY

18.01.2019