

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.No.3981 of 2019
and
C.M.P.No.26191 of 2019

Badmalochini (died)

1. Balavenkataragaajothi
2. Balavenkatachandrika
3. Rathina Kumari .. Petitioners

Vs.

1. Suresh
2. Sugunabhai
3. Jamuna
4. Kalpanabhai
5. Kumuthavalli
6. Varadharaj Guptha
7. Ramamurthy
8. Venkatapathi .. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.07.2019 made in I.A.No.784 of 2019 in O.S.No.610 of 2008 on the file of the learned District Munsif, Udumalpet.

For Petitioners : Mr.D.R.Arunkumar

O R D E R

This revision has been filed against the dismissal of the application filed under Order XVI Rules 1, 2, 3 & 5 of C.P.C. for issuance of summons to the witness to prove a sale deed entered into between the proposed witness.

2. The petitioners have filed the suit for partition, relying upon a partition deed dated 25.12.1978, entered into between the plaintiffs and the defendants. Subsequently, the proposed witness purchased some of the properties, and the said unregistered sale deed has been marked as Ex.A5, with objection.

3. Now that after the commencement of the trial, petitioners have filed an application under Order 16 Rules 1, 2, 3 & 5 of C.P.C. to issue summons to the parties to the above sale deed to give evidence regarding the sale. The trial Court dismissed the application holding that Ex.A5, is an unregistered document and by that document the petitioners

are not claiming any right. In the above circumstances, the trial Court held that there is no necessary to examine the said witness.

4. Now, challenging the above said order passed by the trial Court, present revision has been filed.

5. I have heard the learned counsel appearing for the petitioners and perused the records carefully.

6. The trial Court after considering the entire materials rightly dismissed the application filed under Order XVI Rules 1, 2 3 & 5, holding that Ex.A5, is an unregistered document and the petitioners cannot claim any right over the same, in the above circumstances, there is no necessary to examine the said party as witness. The Trial Court has rightly come to the said conclusion and this Court do not find any illegality or irregularity in the same. There is no merit in the revision and the same is liable to be dismissed.

7. In the result, the civil revision petition is dismissed and the order and decretal order of the Court below, impugned in this revision petition, are hereby confirmed. However, considering the fact that the suit is pending since 2008, the trial Court is directed to dispose of the said suit, on merits and in accordance with law, after giving opportunity to both the parties, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kk

To
The District Munsif Court,
Udumalpet.

C.R.P.No.3981 of 2019 and
C.M.P.No.26191 of 2019

RLD(CO)
RMP(20/07/2020)