



WEB COPY

C.R.P. (PD) (MD)No.2167 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2019

CORAM

THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.R.P. (PD) (MD)No.2167 of 2011
and M.P(MD) No.1 of 2011

Lakshmanan

... Petitioner

Vs.

1.Ilangovan
2.Selvaraj
3.Jegannathan
4.Kannan
5.Manoharan
6.Anandan

... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to reverse and set aside the fair and decreetal order in I.A.No.191 of 2011 in O.S.No.173 of 2008 on the file of the District Munsif Court, Manaparai, dated 05.04.2011.

For Petitioner : Mr.S.Ramesh
For R1 to R5 : Mr.A.Thiyagarajan
For R6 : No Appearance

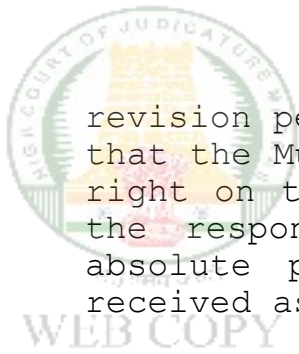
ORDER

The defendant in a suit filed for declaration, is the revision petitioner before this Court.

2.The respondents herein had filed a suit in O.S.No.173 of 2008 on the file of the District Munsif cum Judicial Magistrate, Manaparai seeking to declare their rights to the respective properties in keeping with the terms of the Muchalika dated 24.10.1990. The petitioner had filed his written statement refuting the claim of the respondents herein. In fact, an earlier suit in O.S.No.188 of 2005 had been filed by the revision petitioner herein before the District Munsif Court, Manaparai for bare injunction restraining the respondents herein from interfering with his peaceful possession and enjoyment of the suit property therein. The respondents herein had filed their written statement in which, they had\ stated that the suit was not maintainable in view of the partition muchilikka dated 24.10.1990.

3.An interlocutory application in I.A.No.191 of 2011 came to be filed seeking to receive the muchilikka dated 24.10.1990 and mark the same as evidence on the side of the respondent herein. The

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revision petitioner herein had disputed the said document contending that the Muchalika was a fabricated document and does not convey any right on the plaintiffs. They denied the partition put forward by the respondent and contended that the suit property was their absolute property and therefore, partition muchilikka cannot be received as an evidence.

4.The District Munsif Court, Manapparai, after hearing both the parties, proceeded to allow the application by relying upon the judgment of this Court reported in 2001-1-L.W.257. Aggrieved by the said order, the defendant / revision petitioner before this Court.

5.Heard the learned counsel on either side.

6.Admittedly, a perusal of the muchilikka in question, which is now sought to be marked as an evidence, would clearly show that the partition itself has been effected under the said deed and it is not a document evidencing an earlier oral partition. Therefore, its reception is clearly barred under Section 17 of the Registration Act. The said document cannot be even looked into for a secondary purpose since the suit itself was filed for the relief of declaration on the basis of this document. Therefore, the document is sought to be received and marked as an evidence, only for a primary purpose and not as a secondary evidence. The learned Judge has misconstrued the ratio laid in the judgment of this Court reported in 2001-1-L.W.257.

7.In the instant case, though the plaintiffs would plead that earlier a partition had taken place in January 1990 and the same is reduced into writing in the muchilikka dated 24.10.1990, however, a reading of the document would show that the partition was being effected only under the said document. It is also to be noted that the document sought to be filed is un-stamped. The marking of the document is therefore clearly barred under the provision 35 of the Indian Stamp Act and Section 17 of the Registration Act.

8.In the result, the order of the District Munsif Court, Manapparai in I.A.No.191 of 2011 in O.S.No.173 of 2008 is hereby set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

gns

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To

The District Munsif Court,
Manaparai.

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to M/s.A.THIYAGARAJAN, Advocate SR-90999.

+1 CC to M/s.V.RAGHAVACHARI, Advocate SR-91015.

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30.09.2019**

CS(31.10.2019) 3P 6C