



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2019

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD)No.18 of 2019
and
CMP(MD)No.88 of 2019

Balasakthivel Pandian(Died)

- 1) Pappu
- 2) Bhavani
- 3) Navasakthi
- 4) Balamurugamaharaja
- 5) Krishanaraja

... Petitioners

vs.

- 1) Sivasubramanikadiriyaamy
- 2) Krishanamoorthy
- 3) Vijaya

... Respondents

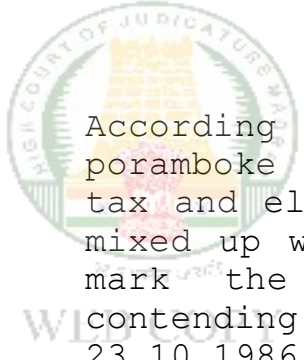
Petition filed under Article 227 of the Constitution of India, to set aside the order dated 23.10.2018 passed in I.A.No.390 of 2018 in O.S.No.159 of 2009 on the file of the District Munsif cum Judicial Magistrate, Usilampatti.

For Petitioners : Mr.M.Divakaran
For Respondents : Mr.M.Prabu

ORDER

Against the order of the Court below receiving the unregistered document, this revision is filed by the plaintiffs.

2.The facts of the case are that the petitioners filed O.S.No.159 of 2009 on the file of the District Munsif cum Judicial Magistrate, Usilampatti, for partition and permanent injunction. Pending suit, the defendants 1 and 3 filed a petition in I.A.No.390 of 2018 to mark the unregistered partition document dated 23.10.1986 stating that the second schedule to the suit property is their ancestral property and the petitioners/plaintiffs were facing difficulties for eking out their livelihood and therefore, as per the compromise in the panchayat, the respondents 1 and 2/defendants 1 and 2 executed a partition document on 23.10.1986 partitioning a portion of their property that is suit property in favour of the plaintiffs.



According to the defendants 1 and 2, the suit property is natham poramboke and they are in possession of the same by paying house tax and electricity charges and the document dated 23.10.1986 got mixed up with some other documents and therefore, they sought to mark the same. The petitioners/plaintiffs filed counter contending that there was no such partition document dated 23.10.1986 by the respondents 1 and 2 and it is a fabricated document in order to grab the property of the petitioners. The Court below ordered to receive said document in the suit and also ordered for sending the document for payment of required stamp duty and penalty, against which, this revision petition is filed by the plaintiffs.

3.Learned counsel for the petitioners/plaintiffs would contend that the Court below without considering the fact that if the said document dated 23.10.1986 which is an unregistered document, is allowed to be marked, the petitioners will be put into prejudice, has erroneously ordered for marking of the document. Further, the respondents 1 and 2 have not stated any acceptable reason for non production of the document along with the written statement and therefore, the Court below ought not to have ordered for marking and sending the document to the Deputy Collector (Stamps) for paying stamp duty and penalty. Thus, he prayed for allowing this revision petition.

4.Learned counsel for the respondents 1 and 2/defendants 1 and 2 would contend that the Court below finding that the alleged document dated 23.10.1986 is a partition deed and it can be marked for collateral purpose, subject to payment of required stamp duty and penalty, has rightly ordered for reception of the said document which does not require any interference by this Court.

5.Heard the learned counsel for the petitioners as well as the respondents.

6.Perusal of record shows that when the suit was posted for defendants' evidence and when the 3rd defendant entered into the witness box and in continuation of the evidence of the defendants' witness, this petition was filed to mark the document which is said to be an unregistered family arrangement. In the petition to mark the above document, it was contended that the document is not a registered document and the learned Judge finding that the document can be marked for collateral purpose by relying on the judgments in 2015-1-L.W-134, Solai vs, Periyakaruppan and others, 2015 (1) CTC 359, T.Chakrapani vs. K.Adimoolam, and 2018 (3) MWN (Civil) Sita Ram Bama vs, Ramvatar Bhama and finding that the document has to be properly stamped, allowed the document to be marked and also ordered for sending the document for payment of stamp duty, where, I do not find any infirmity.

Accordingly, this Civil Revision Petition is dismissed. No



3

costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif cum Judicial Magistrate,
Usilampatti.

+1CC TO M/S.N.VALLINAGAYAM,ADVOCATE, SR.NO.70555

+1CC TO M/S.M.PRABU,ADVOCATE, SR.NO.70542

C.R.P (PD) (MD) No.18 of 2019
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BUC(03/07/2019)3P/4C