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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.10.2018

DELIVERED ON : 12.03.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.1301 of 2015

and

M.P. (MD) No.1 of 2015

1.Chellaiah

2.Palanisamy .. Petitioners/Petitioners/Defendants

Vs.

1.Valli

2.Deivanai

3.Kundumani .. Respondents/Respondents/Plaintiffs

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order made in I.A.No.531 of 2014 in O.S.No.115 of 2008 on the file of the District Munsif, Aranthangi dated 26.02.2015.

For Petitioners

: Mr.M.Suresh

For Respondents

: Mr.K.Baala Sundaram

ORDER

Heard Mr.M.Suresh, learned counsel appearing for the petitioners and Mr.K.Baala Sundaram, learned counsel appearing for the respondents.

2.This petition has been filed against the order passed in I.A.No.531 of 2014 in O.S.No.115 of 2008 dated 26.02.2015 on the file of the District Munsif, Aranthangi.

3.The petitioners herein are the defendants and the respondents herein are the plaintiffs in the suit. The respondents filed a suit in O.S.No.115 of 2008 before the learned District Munsif, Aranthangi for bare injunction. In the suit, the petitioners herein has filed a petition in I.A.No.531 of 2014 to receive the document and the petition was dismissed by the trial Court. Against the order of dismissal, the petitioner herein has filed the present petition.

4.On the side of the petitioners, it is stated that in the original suit, the petitioners have filed written statement with counter claim.



5. The case of the petitioners is that the plaintiffs' father executed a sale agreement in favour of the defendants and he has also executed an unregistered sale agreement and handed over the possession of the property and that after his demise, the plaintiffs failed to execute the sale deed and has filed the suit and that the unregistered document dated 18.10.1974 is an important document to prove the case of the defendants and the document is to be received as an evidence.

6. On the side of the respondents, it is stated that the document dated 18.10.1974 is not a sale agreement and if it is a sale deed, it requires registration under Section 17 and 49 of the Indian Evidence Act. As the document is not registered, it cannot be marked as an evidence. Though the document was stated to be a sale agreement in the written statement, the wordings in the document is not that of the sale agreement and that the document was a fabricated one to cheat the legal heirs of the deceased and that the stamp for the document was not purchased in the name of the defendants and the place of the purchase of the stamp is also Devakottai which is not in any way connected with the suit property and that the document cannot be marked as an evidence.

7. On the side of the petitioners, it is stated that the plaintiffs claimed the property as an ancestral property and that the defendants have filed a counter claim in the suit and that the contention of the plaintiffs is that the executor of the document died long before the date of the document and that the plaintiffs have filed two death Certificates for the same person and a document received under the RTI Act reveals that no such death Certificate was issued on that date in the year 2009 and that originally in the plaint, the date of death of executor was not stated and only in the amendment plaint, the date of death of executor was inserted by the plaintiffs.

8. On the side of the petitioners, it is stated that even an objected document can be marked even at the final stage of the case. If such objections is sustainable, the Court can consider such evidence at the time of Judgment. In support of his contention, the Judgment passed by the Supreme Court in the case of **Bipin Shantilal Panchal v. State of Gujarat and another** reported in (2001) 3 SCC 1 is cited.

9. The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of **R. Munusamy v. G. Krishtappillai and others** reported in 2014 (6) CTC 773, which reads as follows:

"Thus, a perusal of the above referred to decisions of the Apex Court as well as this Court, would make it clear that the unregistered Sale Deed can be marked as evidence and looked into only for the collateral purpose of finding the nature of possession of



the property concerned."

10. In support of his contention, a similar Judgment passed by this Court in the case of **Solai v. Periyakaruppan and Others**, reported in **2015-1-L.W. 134** is cited.

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11. On the side of the petitioners, it is stated that an unregistered sale deed can be considered to prove possession and the petitioner want to mark the document for showing his possession. In support of his contention, the Judgment passed the Hon'ble Supreme Court in the case of **Bondar Singh and Others v. Nihal Singh and Others** reported in **(2003) 4 Supreme Court Cases 161** is cited.

12. On the side of the respondents, it is stated that the document is not a sale agreement. The heading of the document is sale deed ("கூத்த கிரய சாணம் ") and the death Certificate was marked by the respondents as Ex.A8 and that the suit is for injunction and the claim of the petitioners in the counter claim is for specific performance and this document is relied on for the main relief and not for any collateral purpose and that the executor died on 19.04.1968 and there is no chance for the deceased person to have executed the sale agreement and that the document dated 18.10.1974 could not have been executed by the deceased. Moreover, the document is a sale deed and not an agreement for sale and that on the basis of this document, a specific relief was sought for by the petitioners and the document was not filed for collateral purpose. Even as per the citation produced by the petitioners, this document cannot be entertained as the document was not duly stamped or registered.

13. The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of **Pyarijan v. Puttappa and others** reported in **2006-2-L.W. 437**, which reads as follows:

"When the Court of first instance has determined the question of admissibility of evidence, the revision Court cannot interfere."

14. On the side of the petitioners, it is stated that in the original plaint, it was stated that the plaintiffs' father died before 30 years and only in the amendment plaint, it is stated that the date of death is 18.04.1968 and that the petitioner obtained an information from the concerned authorities that no such Certificate was issued and the death Certificate is a forged one and that even an unregistered sale deed can be marked as a document for proving possession. For proving the counter claim, these document is necessary to be marked and that this document was filed to prove possession and that the trial Court dismissed the petition for receiving the document which is not correct.

15. On the side of the respondents, it is stated that when the suit was filed, the actual date of death was not known to the



plaintiffs and that subsequently he came to know about the correct date and an amendment plaint was filed.

16.The contention of the respondents is that the executor of the document is not alive at the time of execution of the document. The death certificate was filed by the respondents stating that the executor died in the year 1968 itself and that the document prayed to be marked by the petitioners is dated 18.10.1974. The contention of the petitioners is that the Death Certificate is a forged one and there is no such entries in the registers and that the information from RTI reveals that there is no such Certificate issued by the Revenue Department. A perusal of the records reveals that the document was executed as a sale deed not as a sale agreement. The case of the petitioners is that the document is an agreement and a counter claim for specific performance is filed by the petitioner. This document needs registration and stamp duty. The entire case of the defendants is depend upon this document whether the document can be treated as a sale deed or as a sale agreement ? whether the document said to be executed by the deceased is a forged one. Whether the death Certificate filed by the respondents is genuine. These points can be decided only in the suit at the time of the trial. In the above circumstances, this document can be marked as an evidence subject to proof and relevance and subject to payment of stamp duty and penalty.

17.With the above observation, this Civil Revision Petition is allowed and the order passed by the lower Court is set aside. No Costs. Consequently, M.P.(MD) No.1 of 2015 is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif, Aranthangi.

+1cc to Mr.M.SURESH, Advocate, SR.No.53494

+1cc to Mr.K.BAALASUNDHARAM, Advocate, SR.No. 53771

C.R.P. (PD) (MD) No.1301 of 2015

MRN

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